S. Hrg. 103–416

IMPLICATIONS OF THE RECENT DIESEL FUEL PRICE INCREASES FOR THE COMMERCIAL MOTOR CARRIER INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NOVEMBER 18, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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IMPLICATIONS OF THE RECENT DIESEL FUEL PRICE INCREASES FOR THE COMMERCIAL MOTOR CARRIER INDUSTRY

THURSDAY, NOVEMBER 18, 1993

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:35 p.m., in room SR–253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Donald M. Itzkoff and William Clyburn, Jr., staff counsels; and Gerri Lynn Hall, minority senior professional staff member.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. The subcommittee please will come to order.

I am very pleased to call the Surface Transportation Subcommittee to order to consider the cause and effects of the recent diesel fuel price increases.

Americans expected that on October 1, when the new gasoline tax went into effect, the fuel prices would increase by 4.3 cents, the amount of the new tax. Many customers barely noticed the new tax. In some parts of the country, indeed, there has been little noticeable increase in retail gasoline prices since that October 1 date.

For consumers of diesel fuels, the story has been quite different. Prices have not increased by the expected 4.3 percent, but by 10, 20 and, in some regions of the country, more than 30 cents a gallon. A multitude of factors have had an effect on diesel prices, including the new sulfur content requirements, a break in a major fuel pipeline, and the new State environment laws.

I am concerned, however, that other factors affecting the runup of diesel prices have been opportunism, some greed, and perhaps illegal price collusion. I already have asked the Attorney General to investigate whether there is any evidence of price collusion and gouging. A group of Senators and I have made inquiries of the American Petroleum Institute and the American Petroleum Refiners about this crisis.

Without objection, the copies of this correspondence, along with a letter from Gail McDonald, the acting chair of the Interstate Commerce Commission, and an excellent article by Dane Hamilton of the Journal of Commerce will be included into the hearing record at this point.

[The information referred to follows:]

LETTER FROM GAIL C. MCDONALD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

NOVEMBER 5, 1993,

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: I am writing to address the concern you recently expressed about the high prices that some of your constituents in the trucking industry are paying for diesel fuel.

As you know, one factor behind recent, increased fuel prices is the federal fuel tax increase enacted as part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) and the Clean Air Act Amendments of 1990 (Pub. L. 101-547) requiring the use of "clean" or low-sulfur diesel fuel.

Another factor affecting fuel prices in the Midwest was last summer's flooding that caused the Explorer pipeline (a major conduit for the supply of fuel into the Chicago area) and several subsidiary pipelines to be shut down. Though the Explorer was reopened in mid-October, its shutdown did create some spot scarcities. According to sources at the U.S. Department of Energy, however, wholesale prices are beginning to decline and some relief should be seen at the retail level in approximately two weeks.

The Interstate Commerce Commission recognized that even a few weeks of high fuel prices can have a devastating effect on trucking companies, in particular on independent truck owner-operators. The Commission responded to the fuel price increase in three ways.

First, I established an Energy Task Force on Fuel Increases to serve as the agency's central contact point and clearinghouse for information regarding fuel price increases. The Task Force currently is gathering fuel-price information, analyzing its findings and sharing data and recommendations with the Commission, Congress, federal and state agencies, and with the transportation industry.

Second, on October 29, the Commission established a new Special Tariff Authority (STA) under docket "Ex Parte MC-215, Petition of the American Trucking Associations to Provide Motor Carriers Relief from Increased Federal Fuel Taxes and Other Federally Mandated Fuel Price Increases." This STA allows independently filed rate increases to become effective on one working day's notice, and "collectively set" increases (that is, rates filed by trucking industry rate bureaus) to become effective on five working days' notice, through December 13, 1993. Under the STA, trucking firms may file tariffs containing fuel-related increases without submitting written cost justification. It is important to note that the Commission issued its STA on the condition that the proceeds of fuel-related increases be passed along by trucking firms to the individuals or entities actually bearing the burden of increased fuel costs.

Third, I directed the Commission's Office of Economics to examine the effects of the recent rise in fuel prices on trucking companies operating under contract and to report its findings to the Commission. Such information will be valuable in our ongoing effort to monitor the performance of the interstate trucking industry to ensure its efficient operation.

For your information, I am enclosing a copy of a Commission news release announcing the establishment of the Energy Task Force on Fuel Increases; copies of the Commission's decision in Ex Parte No. MC-215 and the Commission's news release announcing that decision; and a copy of the Commission's latest, weekly National Fuel Price Survey reflecting national prices overall (as opposed to individual geographic areas).

I hope this information will be useful to your constituents. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely,

GAIL C. MCDONALD,
Chairman.

ICC CHAIRMAN GAIL MCDONALD ESTABLISHES AGENCY TASK FORCE IN RESPONSE TO DIESEL FUEL PRICE INCREASES

Interstate Commerce Commission Chairman Gail Mcdonald announced today that she has established an Energy Task Force on Fuel Increases to serve as the ICC's central contact point and clearinghouse for information regarding recent fuel price increases.

Reporting directly to Chairman McDonald, the Task Force will be staffed by representatives of various ICC offices and headed by Dan King, Acting Director of the ICC's Office of Public Assistance. The Task Force is directed to gather information concerning feel prices, analyze gnat information and advise the Commission, the Congress, federal and state agencies, and the transportation industry of Task Force findings and recommendations.

As part of its assignment, the Task Force will continually monitor the price situation and maintain direct contact with Task Force counterparts in other governmental agencies and with the transportation industry.

INTERSTATE COMMERCE COMMISSION DECISION—EX PARTE NO. MC-215—PETITION OF THE AMERICAN TRUCKING ASSOCIATIONS TO PROVIDE MOTOR CARRIERS RELIEF FROM INCREASED FEDERAL FUEL TAXES AND OTHER FEDERALLY MANDATED FUEL PRICE INCREASES—DECIDED: SEPTEMBER 17, 1993

By petition filed September 3, 1993, the American Trucking Associations (ATA or petitioner)[1] requests that the Commission to initiate a proceeding to provide relief to motor common and contract carriers of property for handling projected fuel cost increases resulting from tax and environmental program changes mandated by the Federal government.

Petitioner states that, on October 1, 1993, the motor carrier industry will be subject to federally mandated diesel fuel price increases totaling an estimated 7.3 to 11.3 cents per gallon. Specifically, the projected cost increases will result from two Federal programs: (1) the Federal fuel tax enacted as part of the omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 (accounting for a 4.3 cent per gallon increase); and (2) the Clean Air Act Amendments of 1990, Pub. L. 101-547, requiring the use of clean diesel fuel (accounting for an estimated 3 to 7 cent per gallon Increase resulting from the refiners' capital cost of installing new equipment, the added cost of manufacturing, the cost of separate storage, and increased delivery costs to all parts of the country because not all refineries will produce the mandated clean fuels).

Petitioner further notes that the trucking industry had a profit ratio of only 0.85 percent in the cumulative 6-month. period ending June 30, 1992, and attributes this low margin to the recession and continuing price wars resulting from overcapacity in the industry. The impending federally mandated fuel price increases, ATA alleges, will all but eliminate the minimal profits the industry has realized.

Petitioner urges that the Commission has a responsibility to assist the trucking industry in confronting and coping with the fuel cost increases. The ATA provides three options, which are discussed below, that it perceives are available to the Commission for providing such assistance. Due to the imminent nature of the fuel increases, ATA requests the Commission to provide immediate relief in the form of one or more of the prescribed options or to exercise its other powers under the Interstate Commerce Act (Act) to develop an effective solution to what petitioner perceives as a fuel cost crisis.

The ATA's first preference is for the Commission to exercise its authority under 49 U.S.C. 10704 and 10705 to impose a fuel surcharge, requiring all motor common and contract carriers to increase their rates so as to recover the federally mandated cost increases.

Alternatively, ATA requests that the Commission issue a new Special Tariff Authority, permitting motor common carriers to increase their individually filed rates on 1 to 3 days' notice. Petitioner argues that such Special Tariff Authority would enable carriers to respond to the uncertain impact of fuel price increases attributable to the Clean Air Act Amendments.

As a less desirable measure (in petitioner's estimation), the Commission could issue a policy statement or directive to motor common carriers and their customers explaining the Zone of Rate Freedom (ZORF) provisions of 49 U.S.C. 10708(d). ATA further urges that the Commission permit ZORF adjustments to be filed under the previously suggested Special Tariff Authority providing for 1 day's notice.

Because the relief proposed under either the Special Tariff Authority or the ZORF provisions extends only to the common carrier segment of the motor carrier industry, petitioner also proposes that the Commission adopt an emergency rule to provide corresponding relief to contract carriers that operate pursuant to contracts that

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[1] ATA is joined in this petition by the American Movers Conference, Film, Air & Package Carriers Conference, Inc., Interstate Truckload Carriers Conference, National Tank Truck Carriers, Inc., National Automobile Transporters Association, Regional and Distribution Carriers Conference, and Specialized Carriers & Rigging Association.

do not include rate adjustment classes and, thus, could not otherwise respond to fuel price fluctuations. Essentially, the proposed emergency provision would reopen motor carrier contracts that do not contain fuel cost-based adjustment clauses for the limited purpose of adjusting transportation rates to reflect fuel cost increases incurred by the carriers as a result of Federal fuel tax increases and the Clean Air Act Amendments. The rule envisioned by petitioner also would give carriers the option of terminating their contracts if the parties are unable to agree upon an adjusted rate after a specified period of time (e.g., 30 days).

Citing the imminent nature of anticipated fuel cost increases and the asserted "ravaging effect the cost increases will have on the industry's slim profit margin" (ATA Petition, at 10.), ATA further urges that the Commission act in response to the petition under 5 U.S.C. 553(b)(3) without notice and comment. Finally, if none of the proposed actions is acceptable to the Commission, petitioner requests the agency to devise an effective solution to the "crisis" conditions ATA attributes to the impending fuel cost increases. (ATA petition, at 11.)

Discussion and Conclusions

The fuel surcharge, Special Tariff Authority, and emergency rule relief measures urged by petitioner are neither necessary nor appropriate responses to the anticipated fuel cost increases associated with the Federal fuel tax adjustments and the Clean Air Act Amendments. For reasons amplified below, we will deny the petition to the extent it requests such action by the Commission.

For corresponding reasons, we are not persuaded that alternative Commission action is warranted at this time to assist carriers in responding to impending fuel cost increases. Rather, we believe that through existing statutory and regulatory provisions, the Commission already has in place mechanisms to permit carriers to respond expeditiously and effectively to market conditions that affect transportation costs, including fuel cost increases of the variety anticipated here. Essentially, the petition requests that the Commission mandate or at least actively oversee and facilitate fuel cost relief. Such measures are unwarranted in the current regulatory environment where carriers already possess the flexibility needed to adjust their prices as they deem appropriate and thus respond effectively to fuel cost increases on their own initiative.

In support of its proposed fuel surcharge and Special Tariff Authority options, ATA has invoked the Commission's past authorization of short-notice fuel-related adjustments where special circumstances warranted such action.[2] In the instances cited, however, the transportation marketplace was threatened by fuel shortages and the corresponding volatility of fuel price adjustments over potentially prolonged periods.

By contrast, the impending fuel cost increases petitioner faces—even if realized to the full extent projected by ATA[3]—clearly will not confront the transportation marketplace with, nor render the industry vulnerable to, such crisis conditions. Indeed, the terms of the federally mandated fuel cost increases have been known to

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[2] To support the fuel surcharge proposal, ATA cites a proceeding precipitated by the Arab Oil Embargo of 1974. Expedited Procedures for Recovery of Fuel Costs, 350 I.C.C. 563 (1975). Similarly, to support the Special Tariff Authority approach, ATA cites the Commission's decisions in STA 90-110, Three Workdays Notice Period on Fuel Related Tariff Increases (not printed), served August 8, 1990, and STA 90-110 (Sub-No. 1), Petition to Establish an Emergency Fuel Surcharge Program (not printed), served August 10, 1990, both of which referenced the Persian Gulf crisis as the basis for Commission action.

[3] The actual impact of the fuel cost increases projected by ATA, in terms of both timing and magnitude, is a matter of some dispute. Although the Federal fuel tax increase is effective October 1, 1993, variations in carriers' fuel storage capacities will delay indefinitely the time period before some carriers will witness effects of the increase caused by purchasing fuel at increased costs. Similarly, the projected fuel cost increases (3 to 7 cents per gallon) ATA attributes to the Clean Air Act Amendments have been challenged as overstated by some industry analysts. Until the marketplace adjusts to and attains equilibrium under the Clean Air Act Amendments, developing any reasonably reliable projection of their cost impact would be impossible. Even if appropriate in other circumstances, responsive Commission action on less than an accurate projection would not be appropriate.

As a practical matter, moreover, any ultimate increase in fuel costs resulting from the federally mandated adjustments discussed here should be assessed against the in fuel prices reflected in the Commission's diesel fuel price survey during the preceding year. (The August 31, 1992, survey reflected a fuel price of 115.9 cents per gallon; the September 13, 1993, survey reflected a price decline to 111.5 cents per gallon.)

We also note that in the January 1993 round of general increases, the Commission authorized rate increases that would permit carriers to recover fuel expenses based on a prize range cf between 116.3 and 119.1 cents per gallon. Based on the recent 111.5 cents per gallon survey price, an additional price increase of at least 4.8 cents per gallon could be incurred before rate bureau carriers will reach their previously authorized expense recovery level.

the industry (and to affected fuel refiners) for a considerable period of time, and their likely effect upon carrier operating costs should level off within a relatively short period.

In any event, we are persuaded that statutory provisions and regulatory actions already taken by the Commission provide common carriers with the rate adjustment flexibility they need to respond expeditiously and fully to any fuel cost increases they may experience in the coming months. As petitioner itself has noted, the statutory ZORF provision at 49 U.S.C. 10708(d) ensures that common carriers are able to obtain rate increases exempt from Commission review except under narrowly circumscribed conditions involving unreasonable discrimination or predatory pricing. Developed as part of the Motor Carrier Act of 1980, Pub. L. 96-296, the ZORF was intended to provide "* * * individual motor carriers of property and freight forwarders with greater freedom to establish rates free of regulatory interference." H.R. Rep. No. 1069, 94th Cong., 2d Sess. 24 (1980).

The Commission has observed that statutory mandate to the fullest extent and, by regulation, has maximized carriers' pricing flexibility under the ZORF. See, e.g., Ex Parte No. MC-169, Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders (49 CFR Parts 1309 and 1310 (not printed), served January 19, 1984 [The Commission exercised statutory authority to expand ZORF by increasing the zone from a 10 to a 15 percent adjustment over the threshold rate); Automatic Expansion of ZORF—Prop. and Freight, 3 I.C.C.2d 40 (1986) [The Commission increased ZORF from 15 to 20 percent and provided for automatic ZORF expansion by 5 percent annually, absent Commission action to the contrary). As a result of such measures, carriers now can take advantage of ZORF pricing flexibility for rate increases up to 50 percent of the rate in effect 1 year previously, and this ratesetting flexibility will increase to 55 percent effective October 23, 1993. 49 CFR 1312.4(b)(7)(vi).

In addition, individual carriers that seek to exercise their ratesetting flexibility may do so by providing 7 working days' notice of increases pursuant to the Commission's regulations at 49 CFR 1312.39(h)(2). Even in the unlikely event that common carriers experience fuel cost increases from the referenced Federal measures as early as October 1, 1993, this abbreviated notice period should accommodate their ratesetting needs.

ATA's further request that the Commission implement an emergency rule to provide relief to contract carriers that are not otherwise protected by rate adjustment provisions is neither practical nor appropriate in these circumstances. There also is a substantial question whether the Commission has authority to alter the terms of extant contracts, but we need not resolve this question at this time. As a matter of general business practice, the vast majority of transportation contracts currently used in the industry contain rate adjustment clauses in anticipation of just such circumstances as escalations in fuel costs. To the limited extent that certain contract carriers may not have provided for such contingencies in their agreements with shippers, the corrective measures urged by petitioner to alter commercial realities and adjust the competitive balance would appear to contravene our determination in other contexts that contract carriers and shippers alike prefer flexibility over any form of protectionism the Commission may be in a position to offer. See, e.g., Contracts for Transportation of Property, 8 I.C.C.2d 520, 527-526 (1992).

In sum, we believe that statutory provisions as amplified by Commission policies and implemented through Commission regulations afford motor carriers sufficient incentive, resources, and ratesetting discretion to respond to any impending fuel cost increases. We have accepted petitioner's suggestion that this decision review for carriers the options available to take such responsive actions. In all other respects ATA's petition is denied.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for relief filed by ATA is denied.
2. This decision is effective on September 20, 1993.

SIDNEY L. STRICKLAND, Jr.,
Secretary.

ICC ALLOWS PROPERTY MOTOR CARRIERS TO FILE RATE INCREASES ON SHORTENED NOTICE, WITHOUT SUBMITTING WRITTEN JUSTIFICATION, IN RESPONSE TO ESCALATING FUEL COSTS

Interstate Commerce Commission Chairman Gail Mcdonald announced today that the Commission has established a new Special Tariff Authority (STA) in response

to recent, spot diesel fuel cost increases. The Commission stated that the STA for short-notice tariff-increase filings is temporary and will not extend beyond December 13, 1993.

Under the STA, independently filed increases may be made effective on 1 working day's notice and "collectively set" increases (that is, rates filed by trucking industry rate bureaus) may be made effective on 5 working days' notice. Trucking firms may file tariffs containing fuel-related rate increases under the STA without submitting a written cost justification. The Commission made the use of the STA authority conditioned upon the proceeds of the fuel-related tariff increases being passed along by trucking firms to tide individuals or entities actually bearing the burden of the increased fuel costs. The Commission will monitor developments and review whether carriers are providing customers with as much advance notification as is feasible of any fuel-related increases and whether the emergency increases are being passed on to owner operators and others.

The ICC's action follows its receipt of information showing that fuel costs recently have escalated dramatically at various points around the nation, and its recognition that the intervals between price increases in some cases are so short that the agency's present notice rules do not offer sufficient flexibility for trucking companies to respond timely, through adjusted rates, to frequent and rapid fuel cost increases.

In announcing the STA today, Chairman Mcdonald also directed the ICC's Office of Economics to examine the effects of the recent rise in fuel prices on contract carriers and to report its findings to the Commission. This assignment follows the Chairman's establishment of an Energy Task Force on Fuel Increases, announced October 28, 1993, to serve as the ICC's central contact point and clearinghouse for information regarding recent fuel price increases.

The Commission's action follows its September 20, 1993, denial of a petition in Ex Parte No. MC-215, Petition of the American Trucking Associations to Provide Motor Carriers Relief from Increased Federal Fuel Taxes and Other Federally Mandated Fuel Price Increases—Petition to Reopen. That petition was denied on the grounds that the relief requested at that time was unsubstantiated. The last time the Commission authorized a STA was in August 1990 in response to rapid and steep increases in fuel costs experienced by trucking companies nationwide as a result of the Persian Gulf War.

In taking action today in Ex Parte No. MC-215, Petition of the American Trucking Associations to Provide Motor Carrier Relief from Increased Federal Fuel Taxes and Other Federally Mandated Fuel Price Increases (Petition to Reopen), and Special Tariff Authority No. 94-05, Short Notice Relief for Motor Carrier Fuel Related Increases, the Commission stated that it will consider petitions for extension of the expiration date should future events warrant.

Vice Chairman Simmons commented in a separate expression that he would have required the submission of a written cost justification.

ICC DIESEL FUEL SURVEY—AVERAGE SELF-SERVE CASH PRICE PER GALLON, INCLUDING TAXES

The fuel survey was started in 1979. The survey initially used price quotes from 18 truckstops to develop an average price per gallon, with primary emphasis on FULL-SERVE cash prices.

A new price structure was initiated on 7/1/91, using 18 truckstops, but now has primary emphasis on SELF-SERVE cash prices.

Month/day/year	Amount	Month/day/year	Amount	Month/day/year	Amount
7/ 1/91	109.2	4/13/92	111.3	1/25/93	113.2
7/ 8/91	109.1	4/20/92	111.3	2/ 1/93	113.2
7/15/91	108.8	4/27/92	112.0	2/ 8/93	113.5
7/22/91	111.4	5/ 4/92	112.3	2/16/93	113.7
7/29/91	111.9	5/11/92	113.2	2/22/93	113.7
8/ 5/91	112.4	5/18/92	114.1	3/ 1/93	114.1
8/12/91	112.6	5/26/92	114.3	3/ 8/93	115.4
8/19/91	112.9	6/ 1/92	114.9	3/15/93	115.3
8/26/91	114.8	6/ 8/92	116.1	3/22/93	115.4
9/ 3/91	115.6	6/15/92	116.6	3/29/93	115.4
9/ 9/91	115.9	6/22/92	117.2	4/ 5/93	115.3
9/16/91	114.7	6/29/92	117.7	4/12/93	115.3
9/23/91	114.3	7/ 6/92	117.8	4/19/93	115.0
9/30/91	114.5	7/13/92	117.8	4/26/93	114.9
10/ 7/91	115.2	7/20/92	117.6	5/ 3/93	114.8

Month/day/year	Amount	Month/day/year	Amount	Month/day/year	Amount
10/15/91	117.5	7/27/92	117.6	5/10/93	115.0
10/21/91	119.0	8/ 3/92	117.4	5/17/93	115.1
10/28/91	120.7	8/10/92	116.5	5/24/93	114.7
11/ 4/91	121.1	8/17/92	115.7	6/ 1/93	114.4
11/12/91	122.1	8/24/92	115.9	6/ 7/93	114.2
11/18/91	121.7	8/31/92	115.9	6/14/93	113.9
11/25/91	121.2	9/ 8/92	116.0	6/21/93	113.2
12/ 2/91	120.4	9/14/92	116.1	6/28/93	112.5
12/ 9/91	119.2	9/21/92	117.4	7/ 6/93	112.5
12/16/91	116.3	9/28/92	117.8	7/12/93	111.7
12/23/91	115.4	10/ 5/92	118.3	7/19/93	111.1
12/30/91	114.7	10/13/92	119.0	7/26/93	110.5
1/ 6/92	112.3	10/19/92	119.3	8/ 2/93	110.1
1/13/92	110.2	10/26/92	119.2	8/ 9/93	109.7
1/21/92	109.9	11/ 2/92	118.9	8/16/93	109.3
2/ 3/92	109.0	11/ 9/92	117.9	8/23/93	109.2
2/10/92	109.4	11/16/92	117.3	8/30/93	109.7
2/18/92	110.7	11/23/92	117.3	9/ 7/93	110.1
2/24/92	110.4	11/30/92	116.4	9/13/93	111.5
3/ 2/92	110.2	12/ 7/92	115.8	9/20/93	112.3
3/ 9/92	109.8	12/14/92	115.1	9/27/93	114.1
3/16/92	109.9	12/21/92	114.5	10/ 4/93	120.7
3/23/92	110.1	12/28/92	114.6	10/12/93	124.5
3/30/92	110.2	1/ 4/93	114.3	10/18/93	127.5
4/ 6/92	110.6	1/11/93	114.5	10/25/93	127.5
4/13/92	111.3	1/19/93	113.7	11/ 1/93	125.4

LETTER FROM SENATOR EXON

OCTOBER 20, 1993.

The Honorable JANET RENO,
U.S. Department of Justice,
Washington, DC 20530

DEAR ATTORNEY GENERAL RENO: During the past several weeks consumers of diesel fuel throughout the midwest have been hit with dramatic price increases. I am writing to ask that the Justice Department review the situation to determine if any price collusion or gouging has occurred.

Price increases during this time period have been dramatic. For instance, the wholesale price of low-sulfur diesel fuel rose 30 percent between September 2nd and October 14th in Omaha, Nebraska. In Grand Island, Nebraska, the increase was 39 percent for the.same time period. Retail prices have risen to $1.42 per gallon in some parts of Nebraska.

Oil industry representatives cite new regulations under the 1991 Clean Air Act regarding diesel fuel sulfur content as being partly responsible for the increase. I find it hard to believe that Clean Air Act requirements which have been well known throughout the industry for over a year justify such dramatic increases. Critics of the Administration's deficit reduction approach also point to the 4.3 cent per gallon fuel tax increase as a culprit even though price increases have been far in excess of that amount.

Getting to the bottom of this matter is important for a variety of reasons. As chairman of the Senate Subcommittee on Surface Transportation I can assure you it is having a dramatic impact on the trucking industry. Eventually, unwarranted price increases will be passed on to consumers in the form of higher prices for the goods and services they use.

I encourage the Justice Department to look into this issue and appreciate your attention to this important matter.

With best wishes.

Sincerely,

JIM EXON,
U.S. Senator.

LETTER FROM SENATOR DASCHLE, SENATOR EXON, SENATOR HARKIN, SENATOR DORGAN, SENATOR KERREY, AND SENATOR CONRAD

OCTOBER 22, 1993.

CHARLES DIBONA,
American Petroleum Institute,
Washington, DC 20005

DEAR MR. DIBONA: We are writing to urge you to take immediate steps to control the recent dramatic increases in the price of low-sulfur diesel fuel in the Midwest.

We are aware that during the last month, a number of events conspired to restrict low-sulfur diesel fuel supplies in the Midwest. The new Environmental Protection Agency (EPA) regulations requiring lower sulfur content in diesel fuel became effective on October 1, 1993. Additionally, the Explorer Pipeline, which ultimately supplies many Midwestern markets, was shut down to allow repair of supports damaged during the summer's flooding.

The supply restrictions have been so severe that EPA sent a letter to diesel fuel distributors, truck carriers, wholesale purchaser-consumers and retailers stating that it would use its discretion in enforcing the Clean Air Act requirements to use low-sulfur diesel fuel if good faith efforts were made to find supplies. At the same time, however, the price of low-sulfur fuel increased by 25 to 40 cents per gallon, causing severe economic disruption in the region. Given the fact that only 4.3 cents per gallon of this increase has been due to the new transportation fuels tax and 2.3 cents per gallon has been due to the shift to low-sulfur fuel, it seems reasonable to speculate that the additional increase in price is attributable to the short supplies and the pricing policies of the oil companies and fuel marketers.

Many of our constituents have charged that oil companies are engaged in price gouging and are exploiting a critical situation for short-term profit. Given the dependence of the regional economy on transportation fuels, we believe that oil companies have a clear responsibility to do everything in their power to ensure a reliable supply and to hold down prices to reasonable levels.

The trucking industry, which is crucial to the economic well being of so many industries within our states, has been particularly damaged by this crisis. Truckers in our states have informed us that they are considering ceasing to haul goods until the price of diesel fuel declines.

The situation has become intolerable, and we are concerned that the major oil companies are not exercising due restraint during this transition to cleaner fuel and the concurrent supply crisis. Therefore, we request that you take steps immediately to end the shortage and to reduce prices of low-sulfur diesel fuel. If the situation does not improve quickly, our state economies will suffer lasting harm. Only through swift and dramatic action can the oil industry demonstrate to the public that it is committed to ensuring a minimal disruption of economic activity and is not intent upon profiting unfairly during a crisis. We look forward to your cooperation in bringing fuel prices back to normal.

Sincerely,

THOMAS A. DASCHLE,
U.S. Senator.
J. JAMES EXON,
U.S. Senator.
TOM HARKIN,
U.S. Senator.
BYRON DORGAN,
U.S. Senator.
J. ROBERT KERREY,
U.S. Senator.
KENT CONRAD,
U.S. Senator.

LETTER FROM CHARLES DIBONA

OCTOBER 29, 1993.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: Thank you for your letter of October 22 expressing your concerns about diesel fuel prices and supplies in the Midwest since October 1—the date EPA's new requirements for low-sulfur fuel became effective. I appreciate the chance to respond to those concerns, although the American Petroleum Institute

does not itself deal in petroleum products and, for legal reasons, cannot seek to organize for its members a common pricing or supply program. Moreover, specific information regarding supplies and prices in any given market must come directly from the suppliers in that market. However, I can give you some background information about developments in the diesel fuel oil business that may help your understanding of the situation. As you will see, market forces already appear to be taking care of the recent problems.

The oil industry has been preparing for the October 1 change for the past three years. According to published data, refineries have invested about $3 billion in upgrading equipment to produce the low-sulfur fuel, and distributors have segregated storage systems for high- and low-sulfur fuels. Over the past several weeks, according to published information on diesel fuel supplies (as shown in the attached graphs), oil companies began to produce the new fuel and build inventories. The data show that companies, through these actions, were, in fact, ready to meet the anticipated demand for low-sulfur diesel fuel, based on recent demand for on-road use.

Unfortunately, certain developments have complicated the supply situation and may have contributed to the price increases you noted in your letter. As you correctly pointed out in your letter, the Midwest flooding caused some logistical supply problems, including the shutdown of an important pipeline, which EPA recognized and made some temporary allowance for in its enforcement efforts.

When supply problems became apparent after October 1, members of the industry took corrective action and sharply increased production. As a result, prices have fallen significantly. Information for the week ended October 22 shows that production of low-sulfur diesel fuel increased to 1.9 million barrels per day—significantly above estimated consumption of about 1.4 to 1.6 million barrels a day and close to estimated total production capacity of 2 million barrels a day. During the same week, inventories of low-sulfur diesel fuel rose almost 2 million barrels, with more than half of that increase in the Midwest region covered by PADD 2, where the supply problems have occurred. Between October 19 and 27, the nationwide rack price for low-sulfur diesel fuel fell from 71 cents a gallon to 66 cents. The Midwest rack price fell even more sharply, from 78 cents to 68 cents.

Let me reiterate that the oil companies are well aware of the public reaction to unanticipated, large price increases and are making every good-faith effort to produce and distribute the supplies of low-sulfur diesel fuel demanded by the market-including recent production at essentially an all-out level. The industry strongly shares your desire to avoid economic disruption during the transition to new fuels.

Sincerely,

CHARLES J. DIBONA.

U.S. DISTILLATE MARKET

Terms used in the following graphs:

PADD—Petroleum Administration for Defense District

PADD 1—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Delaware, District of Columbia, Maryland, New Jersey, New York, and Pennsylvania.

PADD 2—Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin.

PADD 3—Alabama, Arkansas, Louisiana, Mississippi, New Mexico, and Texas.

PADD 4—Colorado, Idaho, Montana, Utah, and Wyoming.

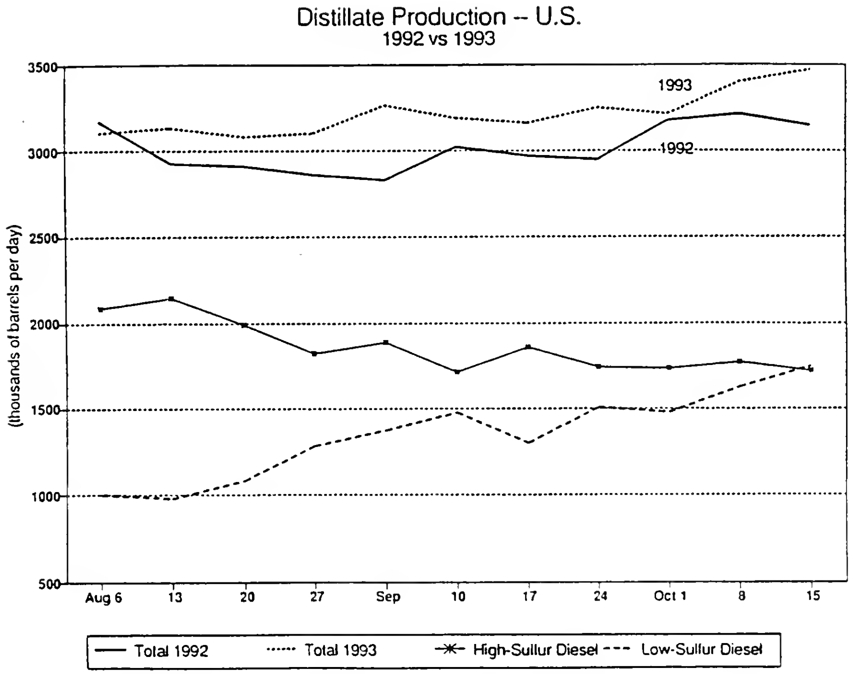
PADD 5—Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington.

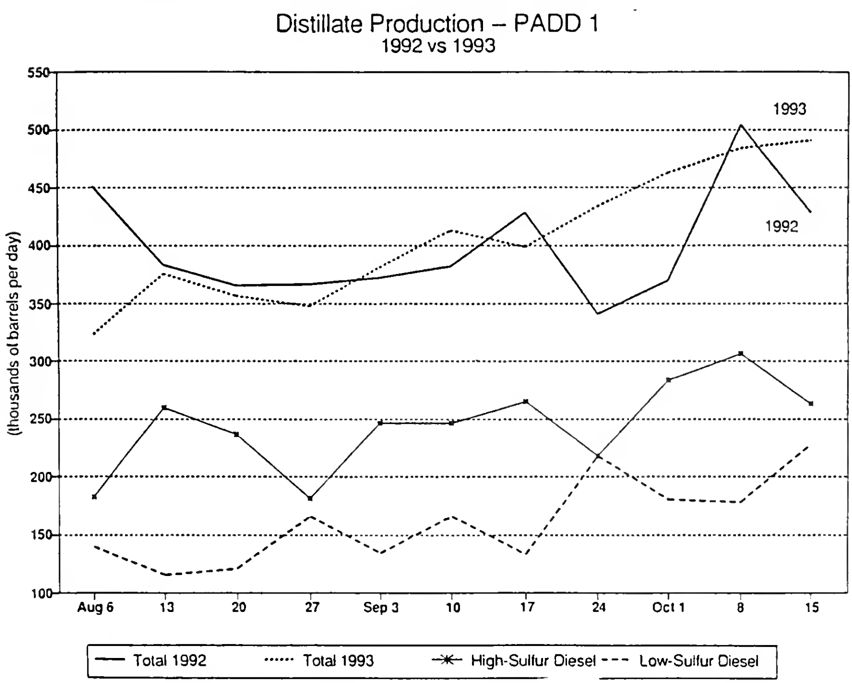
Inventories—Represents inventories, or stocks, held at refineries, bulk terminals, and pipelines. These figures do not include inventories held in secondary and tertiary (consumer) storage.

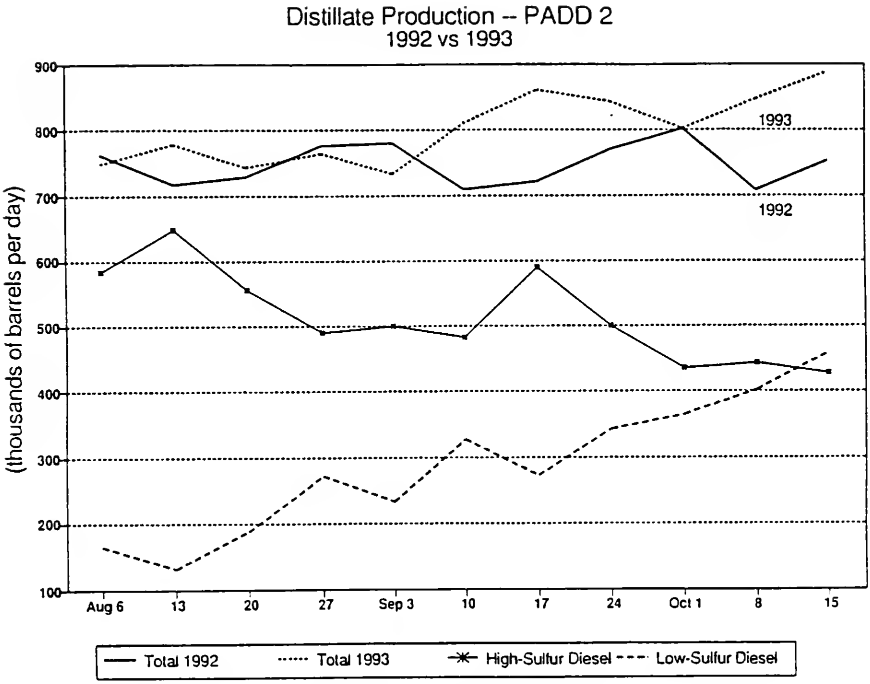
As of October 1, 1993, the following table indicates the composition of distillate production and inventory by sulfur content.

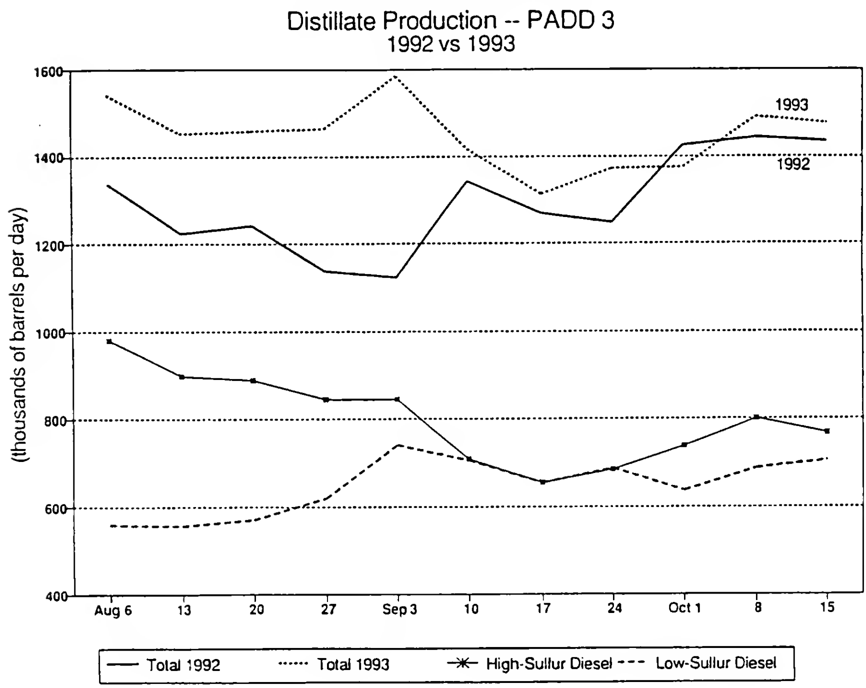
Location	Production		Location	Inventories	
	Low-sulfur (percent)	High-sulfur (percent)		Low-sulfur (percent)	High-sulfur (percent)
United States	45.9	54.1	United States	43.4	56.5
PADD 1	38.8	61.2	PADD 1	37.8	62.2

Location	Production Low-sulfur (percent)	Production High-sulfur (percent)	Location	Inventories Low-sulfur (percent)	Inventories High-sulfur (percent)
PADD 2	45.5	54.5	PADD 2	48.3	51.7
PADD 3	46.5	53.5	PADD 3	45.9	54.1
PADD 4	45.3	54.7	PADD 4	50.0	50.0
PADD 5	53.1	46.9	PADD 5	58.7	41.3

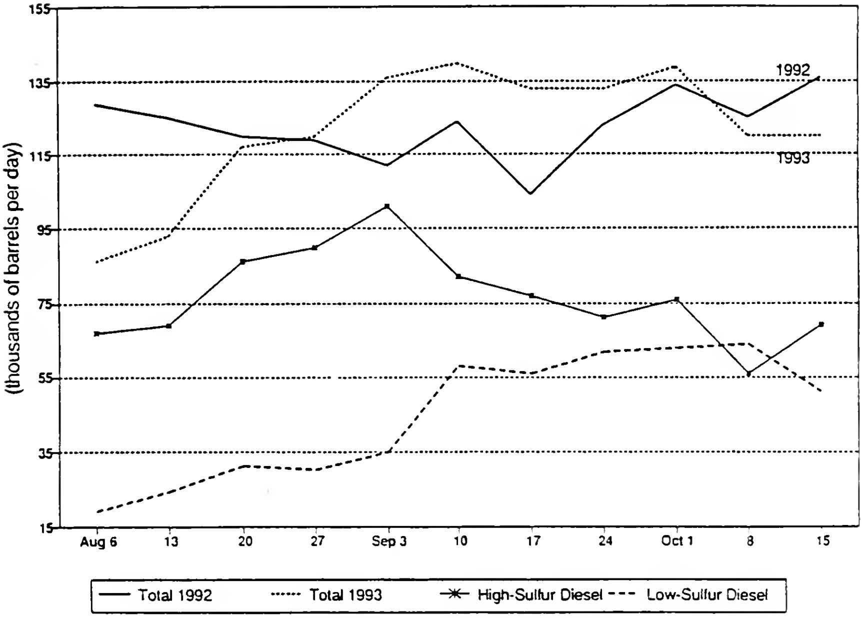

Distillate Production -- U.S.
1992 vs 1993
1993
1992
(thousands of barrels per day)
3500
3000
2500
2000
1500
1000
500
Aug 6
13
20
27
Sep
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel


Distillate Production – PADD 1
1992 vs 1993
1993
1992
(thousands of barrels per day)
550
500
450
400
350
300
250
200
150
100
Aug 6
13
20
27
Sep 3
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel

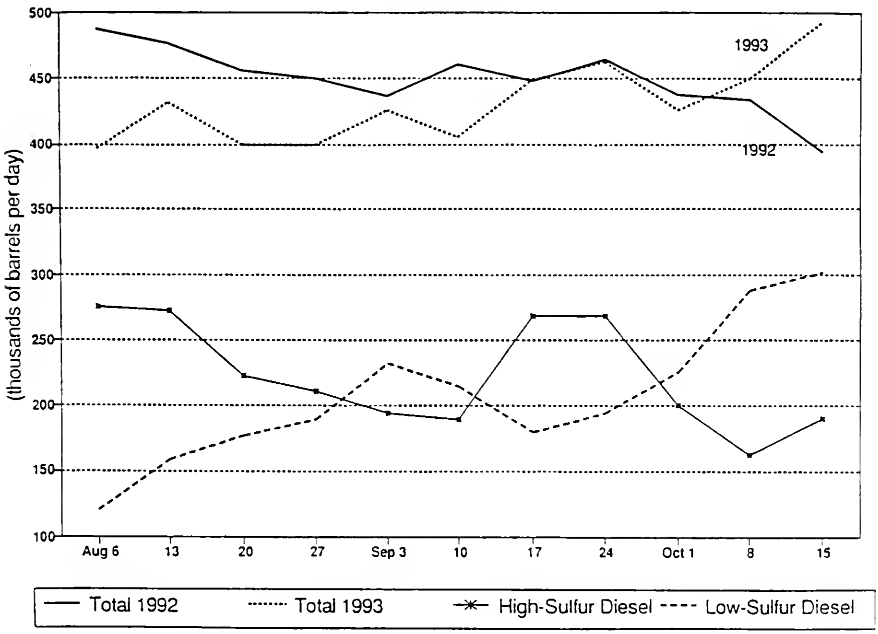

Distillate Production -- PADD 2
1992 vs 1993
900
800
700
600
500
400
300
200
100
(thousands of barrels per day)
1993
1992
Aug 6
13
20
27
Sep 3
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel


Distillate Production -- PADD 3
1992 vs 1993
1600
1400
1200
1000
800
600
400
(thousands of barrels per day)
1993
1992
Aug 6
13
20
27
Sep 3
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel

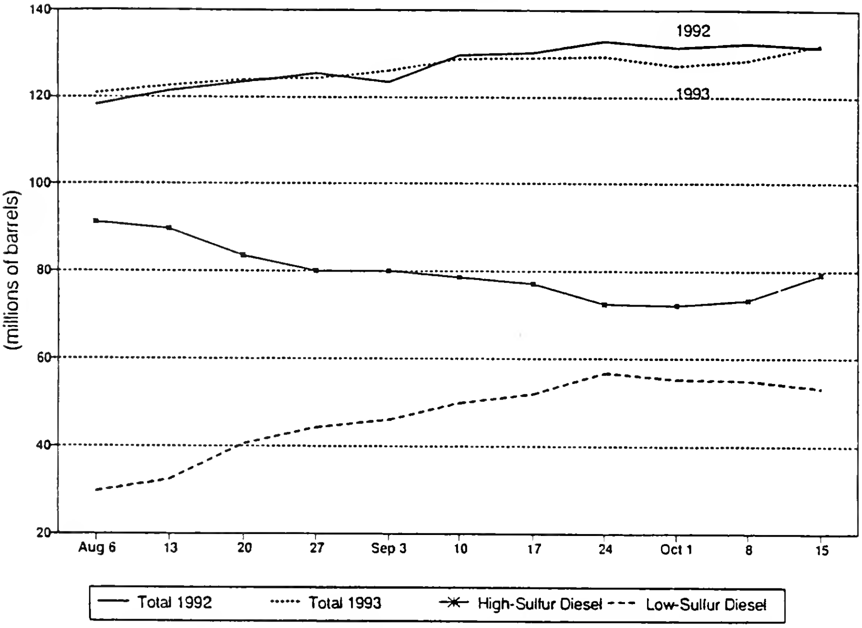
Distillate Production -- PADD 4
1992 vs 1993



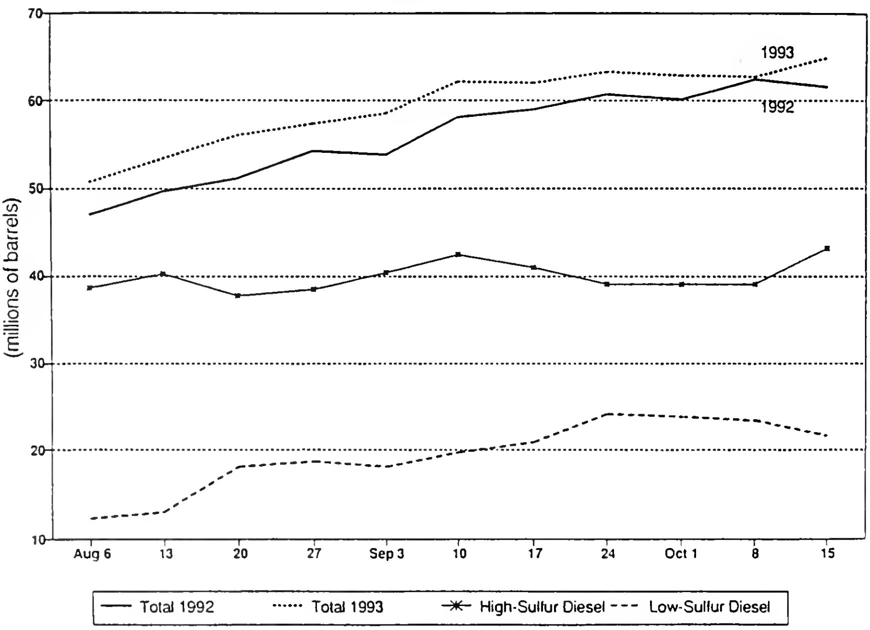
Distillate Production -- PADD 5
1992 vs 1993

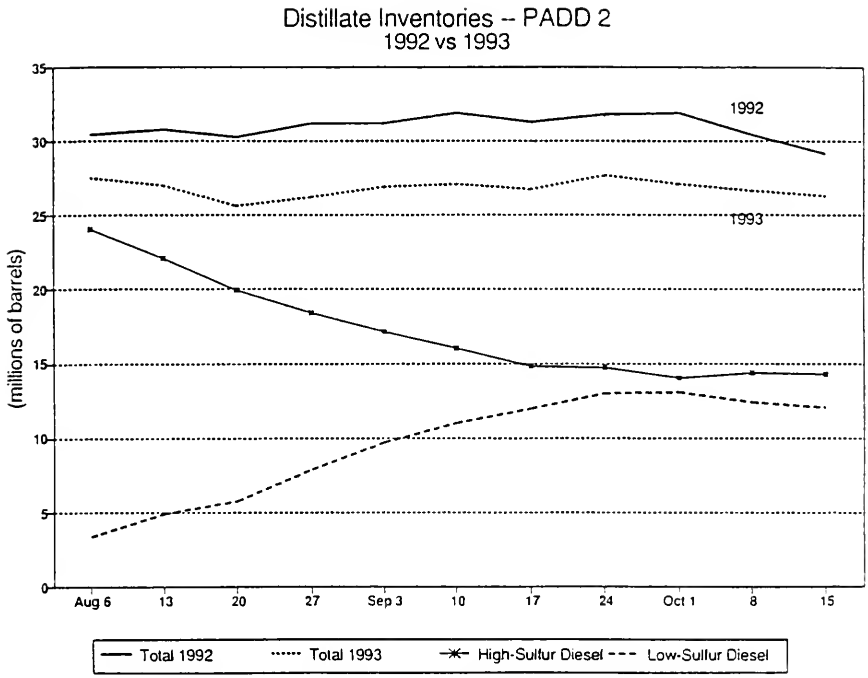


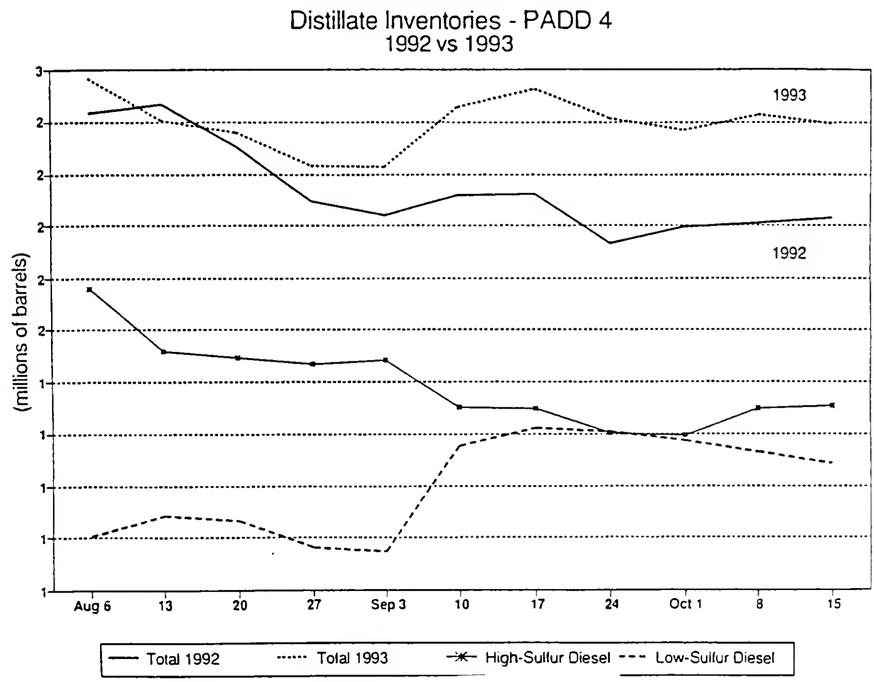
Distillate Inventories -- U.S.
1992 vs 1993

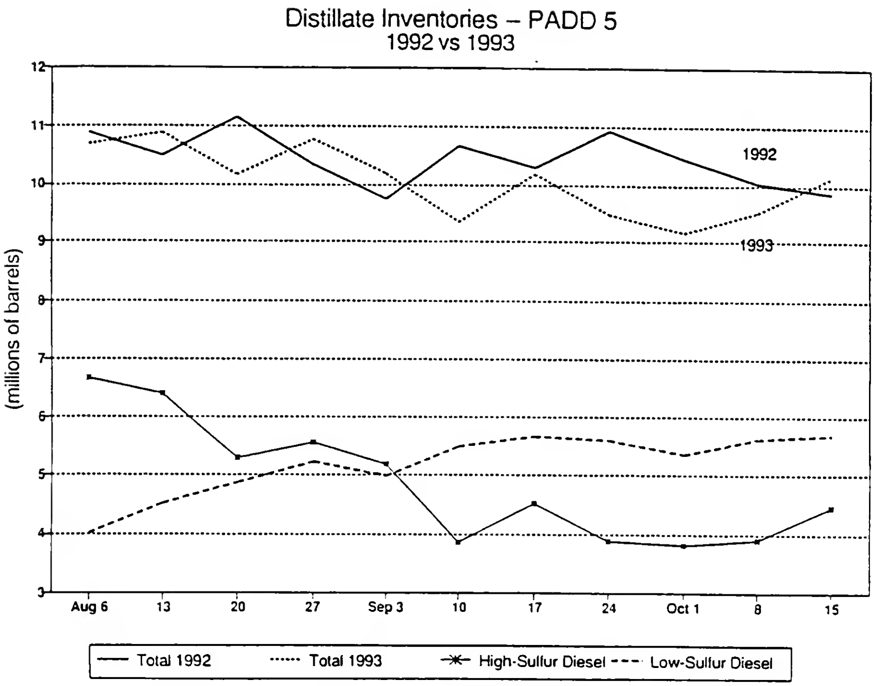


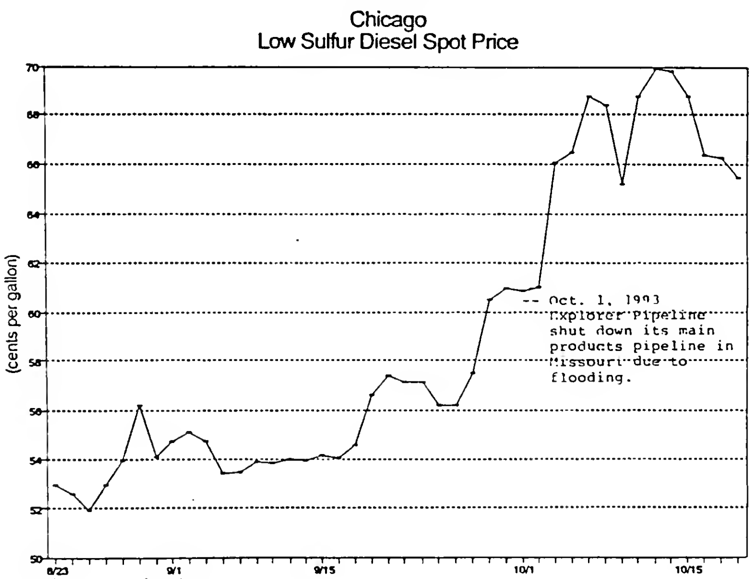
Distillate Inventories -- PADD 1
1992 vs 1993




Distillate Inventories -- PADD 2
1992 vs 1993
35
30
25
20
15
10
5
0
(millions of barrels)
1992
1993
Aug 6
13
20
27
Sep 3
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel


Distillate Inventories - PADD 4
1992 vs 1993
3
2
2
2
2
2
1
1
1
1
1
(millions of barrels)
1993
1992
Aug 6
13
20
27
Sep 3
10
17
24
Oct 1
8
15
Total 1992
Total 1993
High-Sulfur Diesel
Low-Sulfur Diesel





Source: Bloomberg

LETTER FROM SENATOR DASCHLE, SENATOR EXON, SENATOR HARKIN, SENATOR DORGAN, SENATOR KERREY, AND SENATOR CONRAD

OCTOBER 22, 1993.

URVAN STERNFELS.
National Petroleum Refiners Association,
Washington, DC 20036

DEAR MR. STERNFELS: We are writing to urge you to take immediate steps to control the recent dramatic increases in the price of low-sulfur diesel fuel in the Midwest.

We are aware that during the last month, a number of events conspired to restrict low-sulfur diesel fuel supplies in the Midwest. The new Environmental Protection Agency (EPA) regulations requiring lower sulfur content in diesel fuel became effective on October 1, 1993. Additionally, the Explorer Pipeline, which ultimately supplies many Midwestern markets, was shut down to allow repair of supports damaged during the summer's flooding.

The supply restrictions have been so severe that EPA sent a letter to diesel fuel distributors, truck carriers, wholesale purchaser-consumers and retailers stating that it would use its discretion in enforcing the Clean Air Act requirements to use low-sulfur diesel fuel if good faith efforts were made to find supplies. At the same time, however, the price of low-sulfur fuel increased by 25 to 40 cents per gallon, causing severe economic disruption in the region. Given the fact that only 4.3 cents per gallon of this increase has been due to the new transportation fuels tax and 2.3 cents per gallon has been due to the shift to low-sulfur fuel, it seems reasonable to speculate that the additional increase in price is attributable to the short supplies and the pricing policies of the oil companies and fuel marketers.

Many of our constituents have charged that oil companies are engaged in price gouging and are exploiting a critical situation for short-term profit. Given the dependence of the regional economy on transportation fuels, we believe that oil companies have a clear responsibility to do everything in their power to ensure a reliable supply and to hold down prices to reasonable levels.

The trucking industry, which is crucial to the economic well being of so many industries within our states, has been particularly damaged by this crisis. Truckers in our states have informed us that they are considering ceasing to haul goods until the price of diesel fuel declines.

The situation has become intolerable, and we are concerned that the major oil companies are not exercising due restraint during this transition to cleaner fuel and the concurrent supply crisis. Therefore, we request that you take steps immediately to end the shortage and to reduce prices of low-sulfur diesel fuel. If the situation does not improve quickly, our state economies will suffer lasting harm. Only through swift and dramatic action can the oil industry demonstrate to the public that it is committed to ensuring a minimal disruption of economic activity and is not intent upon profiting unfairly during a crisis. We look forward to your cooperation in bringing fuel prices back to normal.

Sincerely,

THOMAS A. DASCHLE,
U.S. Senator.
J. JAMES EXON,
U.S. Senator.
TOM HARKIN,
U.S. Senator.
BYRON DORGAN,
U.S. Senator.
J. ROBERT KERREY,
U.S. Senator.
KENT CONRAD,
U.S. Senator.

LETTER FROM URVAN R. STERNFELS

NOVEMBER 1, 1993.

The Honorable J. James Exon,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: I am writing to you in reply to your letter of October 22, 1993, concerning the situation in the Midwest with respect to low-sulfur diesel fuel. We are aware of a number of factors that resulted in some supply dislocations as

the low-sulfur requirement for on-highway uses began on October 1. At the same time, it appears that the supply of low-sulfur diesel fuel being produced by refiners is, overall, more than sufficient to meet demand, and that most of the problems have been associated with regional supply problems, such as pipeline problems or refinery startup difficulties.

The National Petroleum Refiners Association (NPRA), whose members include virtually all the refiners in the United States, has been following the evolution of the EPA regulations mandating the use of low-sulfur diesel fuel for on-highway vehicles since this proposal was first offered in the mid-1980's to resolve the problem of particulate emissions from heavy-duty diesel engines. As a trade association, NPRA does not in any way control the business activities of its members, nor their determination of pricing policies. The antitrust statutes specifically prohibit such activities. However, NPRA has attempted to provide a forum through its technical programs to enhance the understanding of our members of the new technologies and options available to them to manufacture a host of new and improved products, including low-sulfur diesel. While many refiners chose to make low-sulfur diesel at their facilities, a number chose simply to remain in the business of manufacturing only higher sulfur distillates. These are market-based strategic decisions that each refiner must make, based on the unique circumstances of its operations and markets.

The price increases experienced in the early days of October appear to have moderated as supplies continue to reach those areas where demand exceeded supply. Market economics dictate the use of price as the way to temper demand in a condition of insufficient supply, and apparently, that tool has been used in recent weeks. As prices increase, it causes the market to attract supplies from other areas. This, in turn, improves availability of supply to where prices moderate. This pattern of market response has clearly been taking place in the Midwest in recent weeks. In a 1986 study of the increased cost of manufacturing low-sulfur diesel fuel, NPRA concluded that the total cost that the refining industry would have to invest was $3.3 billion, and that the expected added manufacturing costs of 0.05 percent by weight sulfur diesel fuel would be nearly 8 cents per gallon.

In retrospect, EPA's October 1 program start for the on-highway low-sulfur diesel program was not perfectly planned. First, EPA required a new product made from the same cut of the barrel as home heating oil, just as the peak demand for the winter heating season was beginning. Second, EPA did not include in its final regulations any transition period to get the fuel through the distribution system in advance of the time when its use was required in trucks. Third, EPA's final regulations, issued in 1990, failed to address a number of questions that industry had attempted to have clarified well in advance of the program commencement Industry's questions were poorly addressed in a May 1993 document EPA issued, which then precipitated a workshop where more questions were raised. Finally, on August 6, EPA issued a lengthy question and answer document that resolved some critical issues. In fact, EPA's tough stand on enforcement has resulted in refiners making low-sulfur diesel fuel another 20 percent below the mandated level to avoid extremely expensive enforcement actions. This tighter manufacturing standard has restricted supply below planned levels.

As the program began, EPA quickly responded to a number of local shortages by a limited relaxation of enforcement under certain circumstances of hardship. The situation was aggravated by the October 1, 1993 increase in the tax on diesel fuel and gasoline by 4.3 cents per gallon, which was quickly reflected in the market Large quantities of higher sulfur diesel fuel were purchased at lower prices before the tax increase and the requirement for low-sulfur, resulting in some difficulty locating sufficient empty tanks to permit segregated storage of the low-sulfur diesel. Further, the "non-complying" high sulfur diesel and distillate had to be dyed blue by the refiner for the new program, placing even more limitations on the logistics system.

Refiners have been making sufficient quantities of low-sulfur diesel to meet expected demand. By mid-September, in advance of the program, low sulfur diesel stocks were 41 percent of total distillate inventories. The projections are that about 44 percent of total U.S. distillate demand annually will be for on-highway use. In the winter, this percentage is lower since home heating demand increases sharply. The latest production figures indicate that over 1.9 million barrels per day of low-sulfur diesel and nearly 1.7 of higher sulfur distillate are being manufactured, with industry capacity utilization in the last week running extremely high, at 91.7 percent. The trade press has noted that refiners have not taken their usual maintenance turnarounds in the transition from the gasoline to the distillate season, in an attempt to meet demand.

Congress and consumers should be aware that there may be more problems with diesel fuel supply on January l, when the point of collection of the diesel fuel tax will move upstream to the terminal rack in an effort by Congress to reduce tax evasion and limit the number of tax-exempt purchases. We anticipate some adjustment problems as purchasers who are tax-exempt purchase product on which the tax has already been paid and charged, and then attempt to obtain refunds. While Congress found this tax change would ultimately be beneficial, with greater revenue and less evasion, there will, once again, be some transition problems. We have strongly encouraged the Internal Revenue Service to expedite the regulations implementing this change, to avoid major confusion about the new tax procedures.

I can assure you that industry will do everything possible to continue to meet the needs of the American consumer, at the same time as refiners spend billions of dollars to comply with new environmental regulations. Refiners and marketers of petroleum products operate in a competitive market, where price is the result of the constantly changing supply/demand balance. In addition to providing our members with timely information on the diesel fuel transition, we also have had discussions with the Interstate Commerce Commission about the impact of these new EPA fuel regulations on truckers and their approved tariffs.

I hope this reply is helpful to you. NPRA will continue to work with you and your colleagues to address our mutual objectives of assuring adequate supplies for consumers of environmentally complying fuels. Please do not hesitate to call on me or my staff if we can be of assistance to you.

Sincerely,

URVAN R. STERNFELS.

[Journal of Commerce, November 9, 1993]

DIESEL PRICES PLUNGE, BUT NOT AT THE PUMP

(By Dane Hamilton)

Diesel fuel prices at truck stops have remained high even as wholesale costs have fallen, lending credence to claims that prices have been kept artificially high, an independent research survey shows.

Computer Petroleum Corp., a research group that daily monitors diesel fuel prices at 3,400 to 3,600 truck stops nationwide, found that while the price that truck-stop operators paid for the wholesale "rack" price of diesel fell 12 percent between Oct. 19 and Nov. 2, the average price at the pump fell less than 2 percent.

Asked if it appears that truck stops have kept prices artificially high despite dropping wholesale rates, Chris M. Wold, a Computer Petroleum analyst, said, "That's what the data would seem to indicate."

Trucking executives and Independent drivers have been accusing fuel suppliers of price gouging since Oct. 1, when federal taxes on diesel fuel rose 3.4 cents a gallon, and truckers were required to use low-sulfur diesel fuel.

Analysts and other Industry observers estimated that prices would rise an average of 10 cents a gallon, but jumps of 20 cents to 30 cents or more a gallon in various parts of the country were reported.

The huge price variations have prompted trucking industry calls for federal investigations of price fixing by the oil industry. Particularly hard hit are small truckers, who have seen costs skyrocket. Some are threatening a shutdown this week over fuel costs and other complaints.

Until now, the truck-stop operators have maintained that their prices reflect what they have to pay for diesel.

But Monday, some truck-stop operators said it was possible that some members may be keeping prices high despite dropping wholesale costs.

"It could he happening in some" said Burton Newman, president of Ambest Inc.. which franchises 132 truck stops across the country. "There may be a lag in catching up to the dropping fuel prices, but a truck stop would be stupid to try to take advantage of these prices be-cause everyone is monitoring them.

The Computer Petroleum study placed the average cost of diesel fuel to truck stops at about 74 cents a gallon on Oct. 19. Adding in transportation costs, and federal and state taxes, the average truck stop sold fuel for about $1.24 a gallon that day, Computer Petroleum found.

While the rack price of diesel dropped more than 9 cents on average by Nov. 2, retail prices for truckers dropped only 2 cents, to $1.22 a gallon. Computer Petroleum reported.

The oil industry has blamed distribution problems for the higher-than-expected cost of diesel fuel. They predicted the problem would be solved by the end of October.

But while prices have dropped slightly, high prices for fuel persist.

While most major trucking companies buy their fuel both in bulk and at truck stops, the cost of fuel has risen dramatically in the last month almost across the board.

The American Trucking Associations said it would ask President Clinton this week to set up a panel to investigate the reasons behind the continuing high prices, said John Collins, senior counsel for the ATA.

"Our concern is that historically, prices have gone up faster than they have gone down," he said. "Prices are being reduced in some places, but we're not getting the full brunt of this."

He said it is widely thought that fuel suppliers are taking advantage of the confusion caused by the fuel taxes and low-sulfur diesel. While a combined federal and state panel may take some time to investigate, he said the threat of a government Inquiry may prompt suppliers to drop prices quickly.

Larry Goldstein, president of the Petroleum Industry Research Foundation Inc., agreed that retail diesel prices have remained high despite a decline in wholesale prices. But he said "it's a tough question" as to who is responsible.

He said some distributors held back on switching over to low-sulfur diesel, hoping federal regulators would not enforce rules requiring it, which may have influenced supply and hence prices.

"The whole system—primary, secondary and tertiary—had to convert. The public's perception that these people have monopoly control is not borne out by the facts. Every time prices move out of line, historically they have gone back very fast," he said. "Demand and competition will ultimately determine the price."

Senator EXON. I also would like to acknowledge at this time, although she is not here to testify, the attendance of Gail McDonald, the Acting Chair of the ICC, and her interest in the overall subject.

Gail, if you would stand for just a moment, I just would like to thank you. I appreciate the fact that you are here. This is a very, very important matter, as you know. Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Today, the Commerce Committee will hear testimony on the implications of the recent increases in diesel fuel prices for the commercial motor carrier industry. This issue is an important one, particularly given its impact on the financial state of the motor carrier industry and the prices it charges for its services.

In late September 1993, diesel fuel prices began to increase more significantly than some members of the motor carrier industry had expected. In light of new Federal fuels tax and low-sulfur requirements, some petroleum analysts predicted an average increase in diesel fuel prices of approximately 10 cents a gallon by October 1, 1993. However, some regions of the country have experienced substantially higher price hikes—more than 30 cents per gallon. Although the national average of diesel fuel prices began to decrease in late October 1993, reports are still being received of shortages in low-sulfur fuels and sustained price hikes.

As chairman of the Commerce Committee, I always have sought to promote efficiency in our Nation's interstate and intrastate commerce and to prevent costly disruptions. In this regard, there is concern about the recent reports of unexpected and dramatic rises in diesel fuel prices.

In this hearing, the committee will examine several purported factors which may have contributed to the dramatic diesel price

surges, including: one, the Federal fuels tax, low-sulfur requirements, and California's low-content aromatic fuels standards, all of which went into effect on October 1, 1993; two, the Explorer pipeline shutdown in early October 1993; and three, the convergence of these events. I look forward to the testimony given by witnesses representing the petroleum industry, diesel fuel retailers, market analysts, and the motor carrier industry.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Chairman. We are fortunate to have a distinguished and experienced group of witnesses to help the subcommittee to sort through this very complicated issue, and, hopefully, find the facts on the matter. I am especially pleased to have Ed Trout, a friend of mine and one of Nebraska's leading transportation specialists, appear before this subcommittee, as he has done previously.

For the sake of moving things along and, hopefully, to continue in an orderly fashion, we have divided today's testimony into two panels. I would like to call the first panel to the witness table at this time.

Appearing in the first panel are Ed Trout, whom I just mentioned, president of Cornhusker Motor Lines of Omaha, NE; Mr. K. Michael O'Connell, partner with Collier, Shannon, Rill & Scott of Washington, DC, representing the Owner-Operator Independent Drivers Association; and Mr. J. Scott Susich, general manager, Transportation Division, Computer Petroleum Corp., World Trade Center, St. Paul, MN.

Gentlemen, I welcome each and every one of you. Your prepared statements, without objection, will be entered in the record.

With that, I would like, in the interest of conserving time, both yours and ours, if each one of you, whom I recognize at this time, would give an outline as short as possible of your statement. We then will proceed to questions.

Mr. Trout, welcome. We are delighted to have you again. We will begin with you.

STATEMENT OF EDWARD R. TROUT, PRESIDENT, CORNHUSKER MOTOR LINES, INC.

Mr. TROUT. Good afternoon.

My name is Ed Trout. I am the president and owner, as Senator Exon has said, of Cornhusker Motor Line. We are a truckload carrier in Omaha, NE.

I am honored to be here today to provide you with a firsthand view of the impact that the high fuel costs had on my company, and the relationships with my customers and my owner-operator drivers. I am here not to challenge the legislative mandates, but to inform you that while the intent and spirit of the mandates were sound, the application has wreaked havoc on our industry.

In preparation of the higher fuel tax, the 4.3 cents, and the requirement for low-sulfur fuel, we estimated that cost to be somewhere around 3 to 7 cents. In preparation for that, we asked and received rate relief from our customers to be effective around October 1, 1993. We did this early in September. Nothing leading up to October 1 prepared us for the tremendous increase that we experienced.

A Household Goods Carrier Bureau national survey had diesel fuel at $1.10 a gallon in August. In Nebraska, it was $1.068. The same survey produced $1.111 per gallon in September. By October 4, the national average climbed to $1.211 per gallon. And by October 18, it had risen to $1.287 per gallon, double what we expected. Unfortunately, during this time period in Nebraska, the average price increased to $1.418.

In other parts of the country it was worse. Our drivers reported $1.70 per gallon in some truckstops in California. We expected a 10-cent-per-gallon increase, and that would equate to about 2 cents per mile in operating cost.

The excess cost of fuel raised the cost per mile of operation an extra 4 to 6 percent.

A typical owner-operator makes a 2-cent profit per mile on his operation. If he loses 4 to 6 cents for every mile he runs, he has no incentive to run. To help compensate our drivers for high fuel prices, we had to ask our customers for additional rate increases. Some responded; most did not. But, in all instances, it strained our relationships with our good customers.

Bottom line: We pay the driver a fuel surcharge based on the cost of fuel. In our case, that amounted to $1.50 for every $1 we collected from the shippers. Unfortunately, because of these financial restraints, we are unable to fully compensate our drivers for increases they face, particularly when they ran West.

So, by the end of October, I had two strategically important relationships strained at our company, my owner-operator drivers and our customers. Because of the high cost of fuel, the national truckers shutdown from November 11 to November 17 gained momentum. We, as a company, did not endorse the shutdown. We encouraged our drivers not to participate.

While the strike did not have the strength to significantly affect nationwide freight movements, it did materially affect our company and other companies like us that employ owner-operators. It did that as follows:

Although our drivers did not participate in the strike, about 33 percent shut down for fear of violence to themselves and to their equipment. That caused service failures, which caused tremendous problems with the goodwill that we have built with our customers.

We suffered a 33-percent reduction in revenue. Our third-largest shipper shut us off until the strike was over, for the week of the strike. In order to meet demands of our shippers with a downsized fleet, we ran thousands of empty and out-of-route miles to cover our customers' freight.

We intentionally ran out-of-route miles with loaded trailers, because we committed to our drivers that we would pay extra miles if they had to route around trouble spots.

The effect of the shutdown has cost our core customers, customers that use us exclusively, to ask whether they should have all their eggs in one basket. And that scares me long term.

Much of the impact of the strike is quantifiable. Some is not. Much remains unseen.

We and all our owner-operators came forward willingly with the 4.3 to help with deficit reduction. We came forward willingly for the environment by using low-sulfur fuel. So, we are frustrated. We

are angry because we do not know why this fuel skyrocketed, while the cost of crude remained pretty stable.

My drivers, my industry, and my anger will be greatly appeased if this committee can determine why these prices rose so drastically, why are prices still so high in some parts of the country, why do prices continue to be higher than they should be, and could and should the EPA have done something to prevent this from happening? And what can be done now with this problem?

I have four ideas.

No. 1, find the millions of dollars that our industry has paid the last several weeks. What is the actual cost of refining low-sulfur fuel for long-term planning? And ensure that adequate supplies of fair-priced, low-sulfur fuel is available to us. And last, and we have a big chance to do this all over again, the IRS has mandated fuel dyeing effective January 1, 1994. Help us keep this from reoccurring.

In summary, we need you to help us with an environment that is fair and affords us the ability to control our destiny.

What we and our owner-operators have gone through has been outside the realm of that control. This is where I hope you come in, Senator. Find out what happened and make sure it does not happen again.

Thank you very much for your time and attention. And thank you for inviting me. There is more detail in the prepared statement. I will be happy to answer any questions.

[The prepared statement of Mr. Trout follows:]

Prepared Statement of Edward R. Trout

Good afternoon, ladies and gentlemen, my name is Ed Trout. I am president and owner of Cornhusker Motor Lines, a long haul truckload carrier based in Omaha, NE. I am honored to be here today to provide you a first hand view of the impact of the events of October 1 on my company and the relationships with our customers and owner operator drivers.

In addition to my corporate responsibilities, I have been heavily involved in our industry and its governmental affairs for over 20 years. I have, and continue to be, involved in these matters because I care deeply about trucking and the effect that the events in Washington have on the health of our industry. I am not here today to challenge the legislative mandates that became effective on October 1; rather, I am here to inform you, our lawmakers, that while the intent and spirit of these mandates may have been sound, the application has wreaked havoc in our industry.

Background Information

In preparation for the higher gasoline taxes and the requirement to use low sulfur diesel fuel, we approached our customers with requests for rate increases. We based these increases on the known increase in taxes (4.3 cents a gallon) and the assessment from the EPA, as corroborated by our industry, that the low sulfur fuel would prompt an increase in prices in the range of three to seven cents a gallon. Fortunately, our customers were sensitive to our requests, and the increases were granted.

During the months leading up to October 1, nothing came to our attention indicating that our expectations of increases in fuel prices, as stated above, were unreasonable or unrealistic.

Detailed Observations and Impact

According to the Household Goods Carrier Bureau (HGCB) National Fuel Survey, the average price for self serve diesel during the month of August, 1993 was $110.0 a gallon; in my home state it was $106.8 a gallon. The same survey produced a national, and home state, average of $111. I a gallon for September. By October 4, the national average climbed to $121.1 a gallon and by October 18, it had risen to $128.7 a gallon. The increase, nationally, was almost 20 cents a gallon, double what

we had expected. Meanwhile, back in Nebraska, the average price soared to $ 141.8 a gallon by October 18—an increase of 30 cents a gallon.

Unfortunately, in other parts of the country, it was even worse.

Approximately 25 percent of our freight movements are in the western half of the country. Therefore, our owner operator drivers need to buy fuel in states such as California, Arizona and New Mexico. From August 4 to October 18, 1993 the average price increases in these states ranged from twenty eight to 34 cents a gallon. Furthermore, our drivers were reporting diesel prices of as high as $170.00 per gallon in California—an increase of fifty cents a gallon.

The impact of these developments on my business is numerous and varied:

- While expected price increases were around ten cents a gallon—approximately two cents a mile—our owner operator drivers were now paying an additional twenty to thirty cents a gallon, or an additional four to 6 cents a mile in operating costs. This means that a single driver who traveled 10,500 miles in October would have incurred between $420 and $630 in additional fuel costs. While this may not sound like a lot of money, an owner operator driver typically generates a profit margin of around two cents a mile. These fuel increases not only eliminated his profit, but it meant that he was now operating his truck at a loss. What incentive did he have to run?
- In order to compensate our drivers for these excessive costs increases, we now had to revisit our customers about assessing a fuel surcharge on top of the rate increases they approved just weeks ago. This proved to be not only embarrassing, but in most cases it strained these relationships. In the end, we were able to negotiate some fuel surcharge arrangements, but many of our customers were unsympathetic to our requests.
- Because of the commitments we made to our drivers, the amounts being paid to them exceeded that which we were able to secure from our customers. To date, my company has paid out $1.50 for every dollar I have been able to collect in fuel relief.
- Unfortunately, because of these financial constraints, we still were unable to fully compensate our drivers for the increases they faced. Drivers refused to travel in certain parts of the country because of the unbelievably high fuel prices. Consequently, the relationship between my company and our owner operators has deteriorated. They believe we did not support them enough during a time when we were the only source of relief they could turn to. They are convinced that they have had to shoulder a disproportionate share of the cost of these federal mandates. So, by the tail end of October, as a result of the exaggerated increases in the price of diesel fuel, I had two strategically important relationships at risk.
- Because of the exorbitant increases in the cost of fuel, and an erosion in the confidence our owner operator drivers have in our, and our government's ability to support them, support for a nationwide shutdown from November 11 to 17 acquired momentum. We, as a company, did not endorse the shutdown and encouraged our drivers not to participate. While the "strike" ultimately did not have the strength to significantly affect nationwide freight movements, it did materially affect us. Here's how:
    - While the vast majority of our owner operators decided not to participate in the strike, they still shutdown for fear of violence and vandalism to their tractors, Consequently, for the five day period November 10 to 14, one third of our fleet stayed home. Our inability to convince our operators to run caused us to fall well short of the shipping commitments we made to our customers—both here in Nebraska and nationwide—causing an already strained relationship to worsen further. I estimate that, during this five day period, we suffered a 33 percent reduction in freight revenues—one of our major customers cut us off completely because of the fact that we utilize owner operator drivers.
    - In order to meet as many customer commitments as possible with a downsized fleet, we had to incur substantial costs in empty and out of route miles. The empty moves were necessary to reposition our fleet as quickly as possible and the out of route miles were necessary because we promised our drivers that they would not have to travel through areas that they considered to be "hazardous to their health". We, of course, absorbed the expense associated with these extra and unproductive miles as a cost of doing business.
    - The effects of the shutdown on our customer relationships are such that many are questioning their affiliation with Cornhusker. Furthermore, it did nothing but tarnish our image with the public, in general, and our customers, in particular.
    - As a result of this situation, we have been forced to defer large capital purchases until such time that fuel prices are stable and at an acceptable level.

- Since the middle of October, we have received reports from operators that have experienced equipment breakdowns and reduced fuel efficiency from the use of the low sulfur diesel fuel.

Overall, as you can see, the hike in gas taxes combined with the introduction of low sulfur fuel has had a profound impact on my company. Much of the impact is quantifiable; some of the losses we have sustained cannot be measured, and much remains to be seen. I know I did not foresee these circumstances and I believe these effects were not anticipated by any of you. That is why I am deeply troubled by the events of the past 45 days.

CONCLUSIONS

As a result of these events, I am angry, frustrated, confused and uncertain of what my company faces in the next three to six months. I am angry because my company is losing money as a result of these new provisions and I have not been able to meet the commitments and level of service that my customers have come to expect. I am frustrated because I want to provide more relief to our owner operators and I am unable to secure the support of the shipping public to allow me to do so. I am confused because I know of no good reason why this string of events should have occurred in the first place and because in the face of skyrocketing retail prices, the cost of crude oil has remained stable. And I am uncertain of what lies ahead of me because I see no stability and no fairness in the pricing of diesel fuel. In particular, I would like to address some specific issues associated with this crisis:

1. *Why did these prices rise so dramatically?* I know there were disruptions in the supply of low sulfur fuel, but I do not believe this supply problem contributed wholly to the steep and sudden increase. I am convinced, as are our owner operators, that someone in the supply chain took unfair advantage of the situation and inflated prices unnecessarily. This unconscionable act has caused my company, and many like mine, great harm both in terms of profitability and our ability to attract and retain quality owner operator drivers.
2. *Why did prices rise so high in certain areas of the country and not others?* Again, I believe that the supply problem affected prices in certain regions of the country more so than in others. I also know that because California had the most profound increases, retailers in surrounding states inflated prices in order to take advantage of drivers, such as ours, that were avoiding buying fuel in California. Consequently, we found that our guys were paying as high, and at times, higher prices in states such as Arizona, New Mexico, Utah and Wyoming.
3. *Why are fuel prices still high?* I know that retail prices are beginning to fall. But where we measured the increase in miles, we measure the decrease in inches. I am afraid that diesel prices will remain artificially high because of the fact that we are now entering the winter months where demand for diesel fuel naturally increases. Those that are price gouging, I believe, will continue to do so, using the time of the year as the excuse for high prices.
4. *Could EPA have done anything to prevent this from happening?* EPA should have recognized two important aspects of the low sulfur fuel requirement and acted to defer the effective date. First, given an effective date of October 1, it should have grasped the significance of the supply problems and the actual and perceived effect it would have an our industry. Secondly, and more importantly, it should have set the original effective date for the Spring of 1994, or some time other than the start of winter. There is just too much opportunity for unfair pricing practices when something like a low sulfur fuel requirement, which had an estimated impact on prices, becomes effective at a time when demand for fuel begins to increase.
5. *What can be done now about this problem?* Unfortunately, much of the damage has already been done. I will have to solve many of the problems that have materialized. But there are issues on a much grander scale that only you can solve:

- Vigorously pursue the investigation of unfair pricing practices. The bottom line is that something has occurred here that in a very short time frame has cost an industry millions of dollars for reasons that are not fully explainable. This is something that, in your oversight responsibility, should be very closely scrutinized.
- Require the petroleum industry to publicize the true cost of producing low sulfur fuel. We know what the gas tax costs—4.3 cents. What we need to know—conclusively—is what up to this point has only been estimated—the actual additional costs of providing clean diesel fuel.
- Take an active role in ensuring that adequate supplies of low sulfur diesel fuel exist and will continue to exist in order to avoid the ramifications of an actual and perceived shortfall.

In summary, what I am asking for is a level playing field. I need this government to provide me and my colleagues with an environment that is fair and affords me

with the ability to control my destiny. If my company succeeds or fails, then it should be because of the judgments we have made about business variables within our control. What we and our owner operators have gone through has been outside the realm of our control. That is where you come in: make sure these factors and conditions exist for an economically justifiable reason.

Thank you very much for your time and attention to this matter.

Regional Fuel Price Trends

	New England	Mid-Atlantic	Great Lakes	Midwest	Southeast	Southwest	West	Overall
August 4	114.7	113.5	104.4	106.6	104.6	109.3	116.0	110.0
September 6	114.1	112.4	107.1	108.0	106.2	110.7	118.1	111.1
October 4	121.6	120.0	119.7	122.6	113.5	123.1	131.6	121.9
October 18	121.3	122.8	132.6	134.2	109.3	122.8	139.0	128.7
November 1	122.5	123.3	128.7	128.3	115.1	131.3	139.6	127.1

Source: Household Goods Carrier Bureau.

Selected State Fuel Price Trends

	CA	AZ	NM	KS	NJ	PA	OH	IN	IL	MO	WI	NE
August 4	119.9	112.7	112.6	109.6	110.2	110.4	105.2	96.2	110.3	96.7	107.8	106.8
September 6	128.1	112.5	114.3	110.9	107.2	110.3	106.6	98.5	115.5	94.9	110.7	111.1
October 4	148.4	129.0	124.9	125.8	115.8	122.2	118.5	113.7	128.1	113.6	124.5	125.9
October 18	153.5	140.6	141.8	136.5	118.7	122.7	128.9	124.6	140.3	124.4	138.2	141.8
Increase from Aug. to Oct	33.6	27.9	29.2	26.9	8.5	12.3	23.7	28.4	30.0	27.7	30.4	35.0

Source: Household Goods Carrier Bureau.

Senator EXON. Mr. Trout, thank you very much.

I will proceed with the rest of the panel at this time, and then we will come back to questions. The questions will allow you and the others that have been good enough to come in today to testify to further explain your concerns, as we try to get at the facts.

Before I recognize the next witness at this time, I would like unanimous consent to insert immediately following the chairman's remarks, the note that I have received from my good friend, Senator Dorgan of North Dakota. Senator Dorgan requests our understanding that he cannot participate in today's hearing because he is attending to a family emergency. The Senator from North Dakota has been very concerned about the impact of the diesel fuel price increases in his State.

Senator Dorgan would like to reserve the opportunity to submit a written statement and questions to be inserted in the hearing record. Without objection, that will be so ordered.

Thank you very much for being here, Michael O'Connell, and I am very pleased to recognize you at this time.

STATEMENT OF K. MICHAEL O'CONNELL, PARTNER, COLLIER, SHANNON, RILL & SCOTT, REPRESENTING THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Mr. O'CONNELL. Thank you, Mr. Chairman.

My name is Michael O'Connell. I am counsel to the Owner-Operator Independent Drivers Association. OOIDA is the national trade association that represents more than 350,000 of the Nation's independent truck owner-operators and small business truckers.

Owner-operators play a vital role in the truck transportation industry, and I am very pleased to have a witness sitting next to me that has hands-on experience in using owner-operators. They are responsible for hauling approximately 40 percent of all the intercity freight traffic, and approximately 90 percent of all the perishable agricultural commodities that move by truck in the United States.

We are pleased to have the opportunity to present our comments. And while I will not be talking about the cause, I certainly can speak to the effect on owner-operators of the recent fuel cost increases.

To do that, I would like to give you a little background on the owner-operator segment of the industry and what conditions are like in that segment of the industry so that you can understand how the impact of the fuel cost increase hit the owner-operator.

Typically, an owner-operator purchases his or her equipment and leases it to a regulated carrier. That regulated carrier then solicits the freight, provides the insurance, dispatches the trucks, and provides the operating condition for the owner-operator. The line-haul revenue for the truck movement is generally divided between the owner-operator and the motor carrier on a 75/25 split, the owner-operator receiving 75 percent and the trucking company receiving 25 percent.

A typical owner-operator operates his truck more than 100,000 miles per year. And that causes them to be away from home more than 300 nights per year. Before the fuel cost increase, a typical owner-operator would receive $24,000 to $26,000 in compensation annually. And then, from that, they would have to pay approxi-

mately $3,500 in on-the-road living expenses, and $4,000 in State and Federal income taxes, leading to a net compensation of $16,500 to $17,000 per year for people that are operating 300 nights a year over the road.

The owner-operators are faced with a cost crunch that is not related to the fuel price increase, but the fuel price increase has certainly accented it. Since the passage of the Motor Carrier Act of 1980, with the deregulation of freight rates, real freight rates and real compensation for owner-operators, we estimate, are lower than they were in 1973.

The cost of equipment has skyrocketed. The cost of other operating expenses has skyrocketed dramatically.

With that compensation base, they also face a number of other issues. They are routinely subject on the part of the motor carriers to whom they are leased, to skimming from their compensation—unexplained deductions that appear on their settlement sheets. There are rules right now that would firmly prohibit this practice at the ICC. Unfortunately, those rules are not enforced. There is a very solid set of rules that came after the 1979 shutdown, the truth-in-leasing rules, with all sorts of requirements. But, unfortunately, when you call the ICC and you ask them to enforce them, they are inundated.

Bernie Gailliard, who is with the ICC and here in the room, does a wonderful job with his shop in trying to respond, but they are overwhelmed with the complaints and do not have the staff.

Another problem that is experienced by owner-operators is that a large portion of the freight that is moved by owner-operators is moved through freight brokers. And there have been patterns of freight brokers coming into the industry, having an owner-operator haul a load, collecting the revenue, holding the revenue for 3 or 4 months, and then going out of business and simply disappearing. So, for the owner-operator, the $17,000 a year that they net assumes that they actually earn the revenue from the loads that they haul.

The brokers move on to another city, set up another shell corporation, and they start to operate again, and they sting another set of owner-operators. And these are the same individuals.

And the third area that they face is in the agricultural commodities area. Owner-operators are frequently called upon to absorb market price drops when they move agricultural commodities. The shipper will put a load of produce in California on an owner-operator truck headed for New York. And when the owner-operator gets to New York, he is told that there was a drop in the price, or the quality of the product was not good, and it was damaged in transit.

What has really happened is that in the 3 or 4 days while that commodity was moving in transit, the prices dropped, the market price for strawberries or tomatoes or other agricultural produce. And they simply deduct $600 or $800 from the owner-operator's settlement, and say that that was due to damage to the commodity en route. And it is a damage claim. What it really reflects is a market drop.

I had the absurd situation of an owner-operator who delivered a load not too long ago for which he was to be paid $900. And when he got to the other end, the price of tomatoes had dropped such

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that the value of the load had dropped about $1,500. And instead of being paid $900, he was hit with a bill for $600. He was not going to be paid for the transportation movement, and he owed the broker $600.

These issues have been around for a long time, and they underlie the problem that an owner-operator faces. When the recent fuel price increase happened, it was a substantial and, we believe, disproportionate hike in the price of fuel. And we do not know the reason for it.

But an owner-operator that operates 100,000 miles per year consumes 20,000 gallons of fuel, because the average truck gets roughly 5 miles per gallon as it travels. At 20,000 gallons of fuel and an average cost increase of 35 cents per gallon, these individuals have experienced a direct cut in their bottom line of $7,000 a year unless something is done to increase rates and to compensate them.

And while we have a carrier here who has taken extraordinary steps in order to compensate his owner-operators, because of the revenue division, many carriers are not taking rate increases. And they are going to affect his business and they are going to affect the other business of carriers that are acting responsibly. They are not taking rate increases because they do not bear the cost of fuel. They allow the owner-operator to continue to pay for the fuel, and they do not take a rate increase so that the owner-operator earns the additional revenue.

The ICC has permitted, in response to a petition filed by OOIDA and the American Trucking Association, a fuel surcharge. Few carriers are taking it. Some of the carriers that are taking it are putting the money into a general revenue pool and then subjecting it to the split, so that they get 25 percent of the fuel cost increase while the owner-operator bears all of the costs that are involved in the fuel.

The bottom line is that the recent fuel cost increase has become the straw that broke the camel's back. And it has raised the frustrations of drivers to the boiling point. They have a number of concerns. And the shutdown that was earlier referenced unfortunately has been spawned largely by people who are expressing their own frustrations. It is a spontaneous, not organized, movement. And it reflects the true mood of the truckers that are on the road.

They have shut down because they are outraged at the fuel price increase and all of the other practices.

In addition, and I see that my time is up, but I would like to make one other comment.

Senator EXON. Go ahead.

Mr. O'CONNELL. In addition, our members have been reporting that the low-sulfur fuel has caused tremendous damage to their engines, in seals, in fuel pumps and so forth. And for an average owner-operator, if his engine goes, with the economics that I have just described, he is looking at a $20,000 to $30,000 replacement for that engine. He is out of business at that point.

That problem has not been addressed, and I am not sure that we can address it, because it is an engineering problem.

But, in summary, it can have a devastating effect. And we appreciate the fact that the committee has taken the time, hopefully, to get to the bottom of it. And maybe we can come up with a measure

that will address it. It is a very complex problem. It is not just related to the fuel cost increase, but the overall truck transportation industry.

Thank you.

[The prepared statement of Mr. O'Connell follows:]

PREPARED STATEMENT OF K. MICHAEL O'CONNELL

Mr. Chairman, Committee members and Committee Staff, my name is Michael O'Connell and I am counsel to the Owner-Operator Independent Drivers Association, Inc. ("OOIDA"). OOIDA is the national trade association representing the nation's more than 350,000 independent truck owner-operators and small business truckers. Owner-operators play a vital role in the nation's truck transportation industry. They are responsible for hauling nearly 40 percent of all intercity freight, and more than 90 percent of the perishable agricultural commodities that move by truck. The Association is pleased to have the opportunity to represent the views of its members on the devastating effects of the recent diesel fuel price increases on small business truckers.

Before explaining the impact of the recent fuel price increases on small business truckers, I feel that it is important to provide the Committee with an overview of the economic condition of the owner-operator segment of the trucking industry in order that the fuel price increase might be viewed in proper perspective. A typical owner-operator enters the trucking industry as a company driver. After several years of working as an employee driver, he or she invests in their own equipment, and the driver goes into business for himself. Owner-operators typically lease their equipment and services to a motor carrier that has obtained operating authority from the Interstate Commerce Commission ("ICC"). These owner-operators then engage in the transportation of goods on behalf of the motor carrier. They are generally compensated on a division of the revenue between the motor carrier and the owner-operator, generated by the loads that they haul. In a typical lease situation the owner-operator earns 75 percent of the line-haul revenue, while the carrier retains 25 percent.

From his or her share of the line-haul revenue, an owner-operator pays for the cost of the equipment, fuel, maintenance, tires, tolls, highway taxes, and certain insurance coverages required by the motor carrier. A typical owner-operator operates his truck an average of 100,000 miles per year. This causes the owner-operator to be away from home approximately 300 nights per year. For his efforts in driving approximately 100,000 miles per year, a typical owner-operator receives an average total compensation of $24,000 annually. From this, the owner-operator must pay approximately $4,000 in state and federal income taxes and approximately $3,500 in on-the-road living expenses. This leaves the owner-operator with an average net compensation of $16,500 to $17,000 per year. These net earnings are substantially lower (in real terms) than they were in 1973.

The compensation earned by an owner-operator is further reduced by a number of business practices that prey on his inability to effectively fight back. These practices include "skimming" from owner-operator compensation by regulated motor carriers; "disappearing" freight brokers that fail to compensate owner-operators; and requiring owner-operators to absorb.decreases in the market price of perishable agricultural commodities.

The first of these, the issue of "skimming", has been well documented by numerous federal agencies and congressional sources. For example, in 1978 the then ICC Chairman A. Daniel O'Neal told the Congress:

> [t]he term skimming describes the many devices which can be used by regulated carriers to deprive owner-operators of their just earnings. These devices range from a simple misrepresentation of the actual freight charges on a particular shipment to the failure to assess applicable accessorial charges such as detention charges against shippers. Skimming always affects the earning and financial stability of the owner-operator and can result in preferential treatment of particular shippers.
>
> Now, the extent of skimming in the regulated industry: we believe that skimming is a serious problem in the regulated carrier industry. particularly in the so-called special commodity divisions of motor common carriers. The Commission has long been aware of the opportunity for carriers to exploit owner-operators.

Testimony of A. Daniel O'Neal, Chairman, Interstate Commerce Commission, Hearings Before the Subcommittee on Special Small Business Problems, U.S. House of Representatives, 95th Cong., 1st Sess. at 165 (1978).

The Antitrust Division of the Department of Justice also studied the effects of ICC regulation on independent owner-operators. The Division discussed the revenue split between owner-operators and carriers, and devoted considerable attention to the issue of skimming. The Division stated:

> Skimming * * * means non-compliance with a [lease] contract on the part of the carrier. Skimming can take literally dozens of forms, of which the following are only a sample:
>
> —the carrier may not report the full amount of revenue collected from the shipper, or, after the lease is signed, may report to the lessor that a "rating error" was made and the revenue was less than expected.
>
> —The carrier may deduct from the lessor's share payments for licenses, insurance, pension fund contributions, fines, and so forth which the lessor understood to have been the carrier's obligation under the contract.
>
> —The carrier may delay payment for a long period.
>
> —The carrier may require a large escrow fund to be posted by the lessor, and then not pay interest on the fund, not return it promptly, and/or unilaterally make deductions from the fund for claimed expenses.
>
> —The carrier may not bill the receiver of the shipment for delay time when the lessor's truck is not loaded promptly, or may fail to pass along all of the delay charges to the lessor.
>
> —The carrier may deduct underpayments of fuel taxes from the lessor's share of revenue, but fail to refund overpayments.
>
> The effect of all such practices, of course, is to leave the 0-0 with less than the agreed-upon payment. * * *

U.S. Department of Justice, "The Effects of ICC Regulation on Independent Owner-Operators in the Trucking Industry," at 8 (1978). All of these practices further reduce the ability of an owner-operator to earn adequate compensation. Further, the fuel cost increase has created an additional opportunity for carrier skimming.

Broker abuse of owner-operators is another prominent problem. A large number of freight brokers currently operating have not obtained the necessary authority to do so from the ICC. The more unscrupulous of these brokers frequently contract with an owner-operator to transport a particular load and then 1'disappear", only to open shop in a new city under a different name. Since they have not obtained the necessary ICC authority, and since they are almost always operated in the different city by the same person with a different corporate name, it is virtually impossible for the owner-operator to secure payment for the transportation services he or she has provided. Further, law enforcement authorities do not respond when asked to take action against such fraudulent practices.

In addition to the economic burdens imposed by carrier skimming and broker practices, increased weight and safety enforcement has imposed a compliance burden that cuts directly into owner-operator productivity. One owner-operator that recently completed a trip from Seattle through San Diego to Baltimore, Maryland reported that during that single trip his vehicle had been weighed at fixed weigh stations 32 times, and that he had undergone two complete inspections of his vehicle. At an average of 10 minutes per stop at a weigh scale, and 45 minutes per inspection, these repetitive enforcement procedures extended the driving time on this one load by more than a half day. While the Association supports reasonable safety and weight enforcement, such redundant procedures exact a high cost from owner-operators, and collectively impose a huge loss of productivity on the entire economy.

The above-described problems are chronic in nature, and have existed in the trucking industry for many years. They contribute to an overall frustration on the part of owner-operators and experienced drivers, and result in a net loss to the industry as these drivers find other occupations.

Against this bleak economic scenario, owner-operators have recently experienced a substantial and disproportionate hike in the price of diesel fuel which has ripped directly into their bottom line. An owner-operator who operates approximately 100,000 miles per year uses 20,000 gallons of diesel fuel when operating equipment that typically has an average fuel economy of 5 miles per gallon.

The price increases experienced by owner-operators have ranged as high as 50 cents per gallon in certain regions of the country. If one assumes an "average" price increase of 35 cents per gallon, the typical owner-operator would experience a loss of an additional $7,000 per year from his or her already meager net income. Because freight rates are set by shippers and the carriers to whom the owner-operator is leased, he or she cannot recover this loss by raising rates; instead, owner-operators must rely on their carriers to increase rates, and to pass through additional compensation to the owner-operator who is the party that bears the cost of the fuel price increase.

The Owner-Operator Independent Drivers Association, Inc. and the American Trucking Associations, Inc. petitioned the Interstate Commerce Commission for an emergency fuel surcharge tariff authority. The ICC initially declined the petitions, but acted favorably when both groups filed petitions to reopen the proceeding. The Commission has now granted motor carriers authority to make fuel-related cost increases effective on one day's notice. In its decision, the ICC also required carriers that use the services of owner-operators to pass through any fuel-related cost increase to the owner-operator, since the owner-operator is the party that actually bears the economic burden of the cost increase.

When similar surcharges have been authorized in the past, motor carriers have not passed through the fuel cost increase, despite the fact that they bear no responsibility for the cost of fuel. Instead, they have typically taken the fuel surcharge, and treated it as if it were normal line-haul revenue subject to the division of revenue contained in the owner-operator lease agreement. Such treatment of the increases is patently unfair as the motor carrier itself bears no responsibility for the cost of fuel. This practice is devastating because owner-operators must deal with a sudden increase in their largest expense, and receive little or no relief from the surcharge.

Carriers have begun anew, with the recent fuel surcharge permission granted by the ICC, to unjustly capture a portion of the increased revenue for themselves. Since the ICC decision contained a requirement that any fuel surcharge taken be passed through to the owner-operator, many carriers have filed general tariff increases in lieu of fuel surcharges. Such treatment of the increased cost allows them to include the additional increment of revenue in the overall line-haul revenue which is then subject to payment to the carrier pursuant to the terms of the lease agreement.

Owner-operators are unable to correct this injustice. In 1978, the then ICC Chairman O'Neal summarized the relationship between motor carriers and owner-operators in this regard by stating:

> My concern is that because they like to eat. owner-operators will continue to find it necessary to enter into contracts with carriers they would like to avoid. Or they may find after entering an agreement that promises are not kept and conditions are not met. What can the owner-operator do about that situation? What about the right to contract? The difficulty is that one owner-operator by himself will have very little chance of bargaining any changes in any contract. His option will be to take it or leave it.

43 Fed. Reg. 29,812-13 (1978). The current intense competition in the motor carrier industry has further reduced the bargaining position of owner-operators that existed at that time.

In sum, the recent fuel price increases have had a devastating effect on hundreds of thousands of hard-working owner-operators. They have become "the straw that broke the camel's back", and have raised frustration levels to at or near the boiling point. These increases, in large measure, have been responsible for the growing grassroots support for a nationwide job action by independent owner-operators. Unfortunately, in the weeks following and the Association fully expects that the recent fuel cost increases will be the thing that pushes many owner-operators and small business truckers over the brink. The Association believes that, if the Committee views the impact of the fuel cost increases in light of the overall economic plight of owner-operators, the true impact becomes much more clear.

I thank you for the opportunity to present these comments on behalf of OOIDA.

Senator EXON. Mr. O'Connell, thank you very much. Mr. Susich.

STATEMENT OF J. SCOTT SUSICH, GENERAL MANAGER, TRANSPORTATION DIVISION, COMPUTER PETROLEUM CORP.

Mr. SUSICH. Thank you, Mr. Chairman. Through the course of my remarks, I will be referring to some exhibits, some graphs that were submitted along with the testimony previously.

On November 12, 1993, Computer Petroleum Corporation was asked to testify at today's subcommittee hearing addressing "the nature and extent of reported price increases since October 1993 for diesel fuel." Also suggested for review was the article, "Diesel Prices Plunge, But Not at the Pump" in the November 9, 1993 issue of the Journal of Commerce, which cited a CPC data study.

Finally, a closer analysis of the western U.S. market compared with the national market was advised.

Exhibit 1 represents the national average retail diesel price at truck stops, the estimated acquisition cost of that product, and the difference, or spread, between those two numbers.

The average retail price is compiled at CPC by taking an arithmetic average over approximately 3,000 truckstop prices on a daily basis. This information is gathered electronically from fuel transaction processing companies and represents the self-service cash price of fuel.

The estimated acquisition cost is compiled by taking an arithmetic average of all wholesale No. 2 grade diesel fuel prices available on CPC's system, plus the average State tax, plus the average Federal tax, plus an estimated freight or delivery cost of that product. This information is gathered both electronically and manually.

The average national spread has increased 8.96 cents per gallon during the period in question from 2.28 cents on October 1, 1993 to 11.24 cents on November 15. This increased spread is caused by falling wholesale diesel prices, bringing the estimated cost of product down faster than the rate of decrease of the average retail price. Exhibit 2 represents this price movement graphically.

Exhibit 3 represents the same information as exhibit 1, only broken out for the States of Arizona, California, and Nevada. The estimated spreads in these States have risen for the same reason. The national estimated spread has risen.

In Arizona, the spread has increased 15.84 cents per gallon during the period in question from 5.76 cents on October 4 to 21.6 cents on November 12.

In California, the spread has increased 9.3 cents per gallon during the period in question from a negative 3.1 cents on October 1 to a positive 16.2 cents on November 12.

In Nevada, the spread has increased 8.7 cents per gallon during the period in question, from 5.58 cents on October 4 to 14.28 cents on November 12. Exhibits 4 through 6 represent this same price movement graphically.

If we examine only the period of time in question from October 1, 1993 to the present, the answer to the question is yes, wholesale fuel prices and the acquisition cost of fuel to the truckstop industry has dropped at a faster rate than retail pump prices. However, petroleum markets are traditionally cyclical and volatile. Examining any segment of time less than 1 year will not reflect the true pricing levels in the market, and lead the observer to the wrong conclusion.

In exhibit 7, the national retail price estimated cost and estimated spread of diesel fuel for calendar year 1992 is displayed. The national estimated spread ranged from a low of 4.78 cents on October 13, 1992, to a high of 17.11 cents on January 2, covering a range of 12.33 cents. The average for the entire year was 8.09 cents per gallon.

Examining any of these points in time independently would not reflect the overall pricing levels in the market. Exhibits 8 through 9 represent the same price movement.

Exhibit 10 examines the year-to-date pricing levels for 1993 from a national perspective. The national estimated spread has ranged

this year from a low of 4.7 cents per gallon on October 19, 1993, to a high of 13.18 cents on July 13, 1992—I am sorry, 1993, covering a range of 8.48 cents. The average year-to-date spread for 1993 is 9.63 cents a gallon, or approximately 1.5 cents higher than 1992.

Exhibits 11 through 12 represents this same price movement graphically.

In summary, the average retail price of diesel fuel has increased substantially since the late summer of this year. From August 17, 1993 the price rose from $1.043 per gallon to $1.1835 cents per gallon on November 15, an increase of 14.05 cents per gallon. This increase has had a major impact on the transportation industry.

Prices and costs have started to cycle back down, although at different rates around the country. The downward movement and rate of change we are currently seeing is not abnormal for petroleum markets.

In my opinion, the most significant impact on the transportation industry came from the sudden increase of prices brought on by the simultaneous start of the EPA's low-sulfur fuel mandate, coupled with an increase in the Federal fuel tax.

The combined effect of these two factors raised the price of fuel an average of 9.11 cents per gallon virtually overnight—4.3 cents is attributed to the tax increase, and 4.81 cents attributed to the higher average product cost of low sulfur fuel. My exhibit 13 provides a table that specifies that information.

I appreciate being here, and I thank the committee on behalf of Computer Petroleum Corp. for providing us the opportunity.

[The prepared statement of Mr. Susich follows:]

Prepared Statement of J. Scott Susich

On November 12, 1993, Computer Petroleum Corporation was asked to testify at today's Subcommittee hearing, addressing "the nature and extent of reported price increases since October 1993 for diesel fuel." Also suggested for review was the article "Diesel Prices Plunge, But Not at the Pump" in the November 9,1993 issue of The Journal Of Commerce which cited a CPCTM data study. Finally, a closer analysis of the Western U.S. market compared with the national market was advised.

Exhibit #1 represents the national average retail diesel price at truckstops, the estimated acquisition cost of that product, and the difference or spread between those two numbers. The average retail price is compiled by taking an arithmetic average of approximately 3,000 truckstop prices on a daily basis. This information is gathered electronically from fuel transaction processing companies and represents the self-service cash price of fuel. The estimated acquisition cost is compiled by taking an arithmetic average of all wholesale #2 diesel prices available on the CPC system, plus the average state tax, plus the average Federal tax, plus an estimated freight or delivery cost. This information is gathered both electronically and manually.

The average national spread has increased $.0896 per gallon during the period in question from $.0228 on October 1,1993 to $.1 124 on November 15,1993. This increased spread is caused by falling wholesale diesel prices, bringing the estimated cost down faster than the rate of decrease of the average retail price. Exhibit #2 represents this price movement graphically.

Exhibit #3 represents the same information as Exhibit #1, only broken out for the states of Arizona, California, and Nevada. The estimated spreads in these states have risen for the same reasons the national estimated spread has risen. In Arizona, the spread has increased $.1584 per gallon during the period in question from $.0576 on October 4, 1993 to $.2160 on November 12, 1993. In California, the spread has increased $.1930 per gallon during the period in question from $—.0310 on October 1, 1993 to $. 1620 on November 12, 1993. In Nevada, the spread has increased $.0870 per gallon during the period in question from $.0558 on October 4, 1993 to $.1428 on November 12, 1993. Exhibits #4-#6 represent this same price movement graphically.

If we examine only the period of time in question from October 1, 1993 to the present, the answer to the question is yes, wholesale fuel prices and the acquisition cost of fuel to the truckstop industry has dropped at a faster rate than retail pump prices. However, petroleum markets are traditionally cyclical and volatile. Examining any segment of time less than one year will not reflect the true pricing levels in the market, and lead the observer to the wrong conclusion.

Exhibit #7 examines the national average retail price, estimated cost, and estimated spread for calendar year 1992. The national estimated spread ranged from a low of $.0478 on October 13, 1992 to a high of $.1711 on January 2, 1992 covering a range of $.1233. The average for the entire year was $.0809. Examining either of these points in time independently would not reflect the overall pricing levels in the market. Exhibits #8-#9 represent this same price movement graphically.

Exhibit #10 examines the year-to-date pricing levels for 1993 from a national perspective. The national estimated spread has ranged this year from a low of $.0470 on October 19, 1993 to a high of $.1318 on July 13, 1992 covering a range of $.0848. The average year-to-date estimated spread for 1993 is $.0963. Exhibits #11-#12 represent this same price movement graphically.

In summary, the average retail price of diesel fuel has increased substantially since the late summer of this year. From August 17, 1993 the price rose from $1.043 per gallon to $1.1835 on November 15, 1993 an increase of $.1405 per gallon. This increase has had a major impact on the transportation industry.

Prices and costs have started to cycle back down, although at different rates around the country. The downward movement and rate of change we are seeing currently, is not abnormal for petroleum markets. In my opinion, the most significant impact on the transportation industry came from the sudden increase in price& brought on by the simultaneous start of the E.P.A.'s low sulfur fuel mandate coupled with an increase in the Federal Fuel Tax. The combined effect of these two factors raised the price of fuel an average of $.091 l per gallon overnight; $.043 attributed to the tax increase and $.0481 attributed to the higher average product cost of low sulfur fuel. Exhibit #13 provides a table with this information.

Thank you for allowing Computer Petroleum Corporation the opportunity to provide testimony at today's hearing.

[Exhibits Nos. 1–13 may be found in the committee's files.]

Senator EXON. Thank you very much. We will have some questions. Now, I am very pleased to recognize the ranking member of the committee, Senator Hutchison from Texas. Thank you, and if you have any opening statements, we will be glad to entertain them at this time.

Senator HUTCHISON. Since you are in the testimony, I will say something maybe after everybody has made their opening remarks, and I will have a couple of questions.

Senator EXON. Senator Burns from Montana. We are delighted to have you. You are a very valuable member of the committee. Do you have any opening statement?

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. Thank you for holding this hearing. I have a statement that I would like to submit for the record, and I am looking forward to hearing from the witnesses and answering some questions.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF SENATOR BURNS

Mr. Chairman, I thank you for holding this important hearing. Diesel prices have sky rocketed since October 1, 1993, and if these dramatic changes in the fuel market are not addressed, we will see disastrous effects in the transportation industry.

Understandably, members of the trucking industry are outraged. Shortly after the October 1 price hikes, independent truck operators began to threaten a nationwide strike to protest these soaring fuel costs—their concerns are not unfounded, they are

legitimate concerns for any small business that is slapped with such a dramatic operating cost increase.

There is no way these systems can function will these extreme disruptions in the market.

The problem here is not a lack of taxes, but the absence of an effective collection system. We need to make a change that will effectively reduce the areas where tax evaders profit from this system.

For years up to one-fourth of all diesel fuel consumed by highway users was sold without the federal excise tax being remitted. This dysfunctional tax collection system left up to $1.3 billion in taxes uncollected by tax evaders. The crooks need to be shut out of this system and the law abiding operators should be allowed to compete in the market with fair diesel fuel prices. We need to rechannel this previously uncollected tax away from the tax cheats and provide some relief to law abiding truckstop operators.

This is just one of the problems that is driving diesel prices up, and many others need to be addressed to provide relief for this over burdened industry. commend the Chairman for recognizing the pressing need to address this timely issue.

Thank you Mr. Chairman.

Senator BURNS. I see the questions I have written down are not going to be apropos, so it should be an interesting hearing. Thank you very much.

Senator EXON. OK, we will get into questions now, if we might. At this time I would like to enter into the record an article from the newspaper, in this case the Omaha World Herald, of November 1, 1993, with the headline, "Low Sulphur Fuel Sparks Problems, Lack of Lubricant Damages Engines." I enter this into the record because the issue of low-sulfur fuels is being referenced today, and we do want to address it.

Mr. Trout, let me start with you. You talked about the strained relations both the shippers and the drivers are experiencing now as a result of the recent fuel price increases. I listened with great interest to the testimony of Mr. Susich with regard to what he indicated were the average prices. Clearly, you have indicated prices are considerably higher in Nebraska than those indicated by Mr. Susich. Has the experience of other companies in the Midwest been similar to the extreme difficulties that you and your customers have experienced, and what about some of the larger firms? Have they experienced similar price increases with similar complaints to those we have heard from you?

As a smaller firm, do you have any feeling that you are in any way at a major disadvantage with regard to diesel prices that escalated for whatever reason, legitimate or otherwise?

Mr. TROUT. Well, obviously, the larger carriers probably buy by the bulk, and they do. I had heard from each of them also that their prices at the bulk were probably as a percent as high as ours, Senator, and as far as some of those carriers having problems with the shutdown, they are mostly company-owned drivers, and they mostly ran during the strike, and so I do not think they had the strained relationships with the customers possibly to the extent that we did.

I had heard of a lot of their drivers getting sick, or also just not wanting to run at night because of the perceived violence out there. There was not a lot this time, but they were very cautious and there were slowdowns, but certainly not the 33-percent shutdown that we experienced. Other carriers that were owner-operator carriers like ourself, the numbers were practically identical as far as the percent of people shutting down.

Senator EXON. Mr. Trout, the testimony you have just given, was that essentially from Nebraska truckers?

Mr. TROUT. Yes.

Senator EXON. Can you speak with any direct knowledge, as a trucking operator, as to whether or not you have heard that similar situations and difficulties have occurred from Wyoming and Colorado on your west and Missouri and Iowa on your east? I mean, this is clearly not a problem just isolated to Nebraska.

Mr. TROUT. Absolutely not. In fact, we—in order to do some pricing for our shippers, they asked us to verify some of these increases that we had asked for.

California, and this particular shipper, was in a line and this is the reason that we picked these States. California on August 4 was about $1.25. On October 18 it was $1.53. Arizona, $1.12, $1.40, New Mexico $1.12, $1.41. That is what we were buying it at the pump, and we got this information—the Household Good Carriers Bureau does a survey in major truckstops in the various States, and these are the numbers that I am quoting.

Our numbers, by the way, Senator, are very close to those, the costs that we were paying at those same States, at those same truckstops.

Senator EXON. Mr. Trout, thank you. Mr. Susich, let me ask you to respond to what seems to be significantly different price increases from those which you outlined. I notice in your remarks, though, that you said that these were overall averages. Would that explain what seems to be a rather significant difference in the testimony we just heard from Mr. Trout and what would have been indicated by the well-prepared charts you have furnished us?

Mr. SUSICH. That is the case. If we look at pricing levels on an average basis, the numbers that I originally presented are correct. However, I can certainly agree with Mr. Trout and provide individual circumstances of prices that certainly verify the levels that his drivers saw, and in some cases maybe even higher.

Throughout the country, depending on the region that the carrier was operating in, prices could vary significantly from what the overall averages were.

You mentioned in your opening remarks about pipeline and supply disruptions that had a major impact on the upper Midwest market east of St. Louis up through Illinois, Michigan, and that area, so definitely there were cases where prices varied significantly from what the average overall levels were.

Senator EXON. I assume that that pipeline is now back in full operation; is that right?

Mr. SUSICH. To my knowledge, it is. The pipeline was originally damaged by the flooding that occurred in St. Louis and was temporarily repaired, and unfortunately I believe it had to be taken down again for repairs on the very same day that the tax increase hit and low-sulfur mandates began, and so in that part of the country there was a variety of factors that all happened at one time.

Senator EXON. Thank you. My time is up on the first round. Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman.

Have you gone to the Department of Justice, or the Department of Transportation to talk about the price gouging issue to see if

there could be any relief granted on perhaps a more quick basis than we might be able to provide for you here?

Mr. TROUT. Senator Exon had written Janet Reno to ask that that be done, and I think the American Trucking Associations has done the same thing.

Senator Exon responded to my request 2 or 3 weeks ago almost immediately with that letter, and I certainly appreciate that. I do not know what has happened, but I will have to say the fuel started going down a little bit ever since he sent it.

Senator EXON. I will take full credit for it. [Laughter.]

But it is not enough. [Laughter.]

Senator HUTCHISON. Well, I am impressed. [Laughter.]

You have also brought up the fact that not only has the increase in taxes increased the fuel price, and then, perhaps, price-gouging, but also the mandates on the fuel content coming at the same time. I wonder if that is going to be part of any review that you would ask for from the Department of Transportation?

Mr. TROUT. Well, there was really three problems, and it all hit at once. It was, as you said, the top two, the tax and the low sulfur, but it also hit on October 1, and historically fuel goes up a little bit about that time because of the heating oil, and that was two things that hit at the same time that was a problem.

But there is no way that anybody can justify the amount of money that that fuel went up based on the 10 cents we are talking about, 4 cents, 4.3 for the tax, and probably 5, 6 for the other. In some cases, it went up 30 to 50 cents, and not for a constant period of time, but certainly for a short period of time, and there had to be someone or something in there that was taking some extra money out of there.

We had word from our truckstops in Nebraska that the prices that they were getting were pretty well equal to the difference, to the increase in the diesel price, so I am pretty sure that at least in Nebraska it was not the truckstops that were doing that. It seemed to be happening before it got to them.

Senator HUTCHISON. I certainly hope in the future when there are going to be tax increases, that we would look at the bigger picture to see the impact. Because when I was home in the August recess, I went all over my State, and I have to say that the biggest complaint I had was about environmental regulations. Now, obviously, there is concern everywhere for the environment, but the environmental regulation stories that I received from the private sectors and from the public sector, were really incredible. New environmental regulations did not necessarily take into account reasonableness, economic impact, or the impact on jobs that would have as a factor when you are looking at the regulatory arena.

So, I am very interested in looking at all of these factors and trying to make sure that we balance everything that we do in the regulatory arena. And I would hope that if we do any kind of study of this, that we would look at all of the factors that come into play when there is a tax increase, regulatory addition, or new mandate; that we look at the big picture on how it is going to affect an industry.

But I would like to see you have a full hearing of this before we could get legislation or a study, because obviously timing is not

going to be swift in this body. But I am interested in, over the longer term, looking at the bigger picture when we take any steps that affect business. I come from the business side myself, and I know the impact that regulations have in general, so I certainly have sympathy for your situation.

Mr. TROUT. Well, I certainly echo everything that your constituents said back home. We are very concerned about the environmental issues as well. It is a tremendous cost to us, and sometimes we feel that no one in Washington realizes what that is doing to the local people out there. And I really appreciate your comments about wanting to do something about looking at the big picture when we pass legislation.

The other thing is what you can do is Justice does have this. And, I mean, boy, here it is. The fuel cost is x and now it is 50 cents plus x, somebody ought to be able to figure out where that is inbetween. And if you could, you know, pursue Justice to get to the bottom of that, I think that is what we are here for. I mean, that is what we just—that is why I wanted to come back, to emphasize that that is what we sure hope you can do.

Senator HUTCHISON. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Hutchison.

Senator Burns.

Senator BURNS. Thank you, Mr. Chairman, and welcome, Mr. Trout. I have seen your trucks go up Interstate 29.

Mr. TROUT. Yes. Within the speed limit; right?

Senator BURNS. I was driving within the speed limit and they were passing me. [Laughter.]

Senator HUTCHISON. We can take note that the Senator from Montana is always a troublemaker.

Senator BURNS. I am just causing trouble here. I live in Montana. The main experience I ever had in Nebraska was finding my wife.

Mr. TROUT. I am in luck.

Senator BURNS. I found her in North Platte. The second one was selling a lot of cattle, and every now and again we would leave a tailgate open. So, my experience with trucks has been very positive so far. [Laughter.]

An accumulative effect is right. We do not take into consideration, in what we do here in Washington, what the State regs are doing to you when you cross different States. I assume that you run interstate and intrastate?

Mr. TROUT. Yes.

Senator BURNS. I am interested in what Mr. O'Connell had to say about how once you get a load from Fireball, CA into New York, all at once the market goes down and they take it from the truck bill. I want to know how they get that done?

Mr. O'CONNELL. Do you want me to respond?

Senator BURNS. Yes, either one of you. I have never heard of that before, and I think there is some unfairness here.

Mr. O'CONNELL. There is some unfairness, and it is a major problem. The produce brokers will generally ship the load, and they will contract for it, say, in the Salinas Valley and ship it to New York, and the load would be about 4 to 5 days in transit, assuming that everyone is moving within the speed limit, as we all do.

When the load gets to New York, if there has been—if it was a stable market price when it left and it gets to New York and the market price is roughly the same, they just pay the owner-operator for the transportation movement and the owner-operator goes on his way. However, if there has been a market drop in the price, what happens is the owner-operator arrives, they inspect the produce and they say that this is not in the condition that we expected it to be in.

And because of the Perishable Agricultural Commodities Act, you do not turn that around and go back to the shipper. They say that it was damaged in transit. And the owner-operator has two choices. He can either take part of the money and go, or he can take none of the money and try to find a lawyer to sue them for what amounts to a $1,000 load, and not many people in my profession are willing to take those cases.

Senator BURNS. OK, so what if the market goes up?

Mr. O'CONNELL. If the market goes up, needless to say, they do not give the owner-operator extra money for hauling the load.

Senator BURNS. I'll be darned. Now, I find that rather unfair.

Mr. O'CONNELL. We were wishing—if we can do something about that, Senator. We would be willing to take the drop if we can also get the increase, I think. It is a serious problem, though, and it is grossly unfair, and it is something that an owner-operator has no way of fighting back.

Senator BURNS. OK, now I will ask you this: Who decides what the damage is to the produce?

Mr. O'CONNELL. Usually the receiver will determine whether it is damaged in transit. There are provisions for inspectors to come out and look at the produce. However, when an owner-operator tries to invoke those provisions and get an inspector to come out and actually look at it that is qualified to make the assessment, he is told that does not apply to you. You are trucking company, it was damaged while you were traveling, you did not have your reefer set properly, you did not have your—it took you too long to get here, whatever, and they just deduct the money.

And one of my partners always shared with me, Senator, that you always negotiate with the money in your client's pocket. Well, the money is in the broker's pocket at the other end, and they are not going to pay.

Senator BURNS. OK. Is this the only area of the trucking business where this happens? Is it just in produce?

Mr. O'CONNELL. There are broker abuses in nonperishable freight as well. The problem of disappearing brokers, which many truck load carriers have seen—and I believe the Interstate Truck Load Carriers Conference asked for some relief on that and has not, so far, gotten it.

Yes, that particular problem happens in perishable agricultural commodities. There is a whole different set of problems when you are dealing with the dry freight brokers, because what they are doing is they will go into business, operate out of a telephone booth, book loads for about a month or so, have people haul them, owe them money, and then all of a sudden the broker disappears in Portland, say, and then he sets up in Spokane, and then he moves from Spokane to Seattle.

I am not trying to tag any particular part of the country, but they all have different corporate names and they are incorporated, or they use a corporate name. And you have no idea who is behind the brokerage, and all they are doing is scamming an owner-operator. And you have someone, again, who is making $17,000 a year and one load that pays $1,000, if he loses that it is a pretty significant drop in his income.

Senator BURNS. I am not a rocket scientist, but I can figure that out.

We hear about this diesel tax which is collected at the refinery rather than at the truckstop or the pump. Is that a good idea?

Mr. TROUT. I think it is. It is going to eliminate a lot of confusion as to who paid and why. I think it is going to cause some problems right off the bat, because of the dyeing that we talked of—the fuel dyeing that I talked about in my testimony. I think we could be looking at the same type of a problem January 1, 1994 that we did October 1, unless we have all learned our lesson and the IRS goes to EPA and tries to figure out what happened. Because although, again, the legislation was sound, but if it is implemented poorly, we are going to be in the same boat all over again, Senator.

Mr. SUSICH. If I may, I would like to respond to that as well. My company has done a lot of work with various Government agencies using fuel data and fuel prices to try to track down people who are cheating on their taxes.

One theory regarding the shortage of low-sulfur diesel fuel that happened in early October was actually attributed to the amount of tax evasion that is going on. In anticipating the amount of low-sulfur fuel that would be necessary, a logical way to determine the amount of over-the-road fuel being used is to count the number of gallons that tax is collected on. In doing so, refiners were able to try to estimate what the demand would be. However, on October 1, once there was actually a differentiated product between overtaxable fuel and off-the-road tax-exempt fuel, many illegitimate distributors around the country suddenly began buying taxable over-the-road fuel and creating a much excessive demand that they did not anticipate.

And so your very question about is it a good idea to look at that tax, at a different way of collecting it; yes, because the implications of that are wide reaching and affect the very topic that we are talking about right here today.

Senator BURNS. Thank you very much, Mr. Chairman.

Mr. TROUT. Senator.

Senator BURNS. Yes.

Mr. TROUT. May I respond to that earlier question you asked? I do not want to walk out of here thinking that all truckers gypped the owner-operators, because I think we might be talking about an exception. The van-type carriers do not haul commodities. And we pay our drivers by the mile. We pay them empty or loaded, whether or not the freight gets ruined or not. The other things, we also use brokers, but if we have a broker that does not pay us, we pay the driver. That is our loss. And, obviously, there are some problems in that industry, and I would support anything you could do to solve his problems, but that is not common in the trucking industry.

Senator BURNS. We used to hire a lot of trucks, and I know I have had the cattle market go down on me, but it seemed like the truck bill was the same.

Mr. O'CONNELL. Senator Burns, and I am not speaking to the carrier issue when I am talking about that. This is an owner-operator who is engaged in hauling exempt commodities, perishable agricultural commodities, generally on his own.

Senator BURNS. OK.

Mr. O'CONNELL. And picking it up from a broker and taking it on his own, not through a carrier. And the carrier is legally liable to pay for the load, the gentleman is correct. Even if he does not get paid for it, the carrier has to pay the owner-operator, and it is the rare exception that they do not. But in the exempt agricultural commodities area where there is no ICC regulation, it is a wild and woolly business, and it is generally small businesses dealing with other small businesses, and this is where you run into those problems. But it is not as prevalent at all in the carrier area.

Senator BURNS. No wonder these truckers are wearing cowboy boots. All right.

Thank you very much, Mr. Chairman.

Thank you for your testimony. I appreciate it.

Senator EXON. Senator Burns, thank you very much.

This may be somewhat redundant, but I want to get it clear for the record if I may, Mr. Susich. According to the testimony we have received—and I believe Mr. Trout started out by saying that the truckers had anticipated about a 10-cent increase in diesel on October 1—and from what I could tell from your testimony and the charts, your records indicate that there are two factors which we all recognize affecting the recent fuel price increase, the increase in Federal taxation, and the increase in costs for low-sulfur diesel fuel. Maybe you could comment on that. Is low-sulfur diesel fuel always going to be roughly 5 cents more a gallon to produce than other diesel, or was that just startup costs? What I am trying to get to is that we seem to agree generally that at least a 9- to 10-cent increase would have been anticipated and could have been justified. I still do not understand the increase above that, other than the pipeline breakdown.

When this new, low-sulfur diesel was entered into the system, was there some temporary change such as draining the tanks, filling up the tanks, that would have led to strictly a temporary spike in prices? If so, I would have thought the temporary increase would have been over and prices would have been back down by now.

Mr. SUSICH. That is essentially true in that there were some other factors. In addition to the pipeline, there are other factors that caused supply shortages around the country. Because of the way the petroleum distribution system works in the United States, oil companies had to start introducing low-sulfur product into the pipelines and into the storage and distribution system starting as early as mid-August. So, all through the month, they were trying to get product in place.

Now, ideally the retailers and distributors would begin buying that low-sulfur product and get it in place and phase it all in so when October 1 hit everybody had product in their tanks, the distribution system was full, and they were ready to begin. If that was

the case, you would have seen a gradual increase in price. It would have still risen, but it would not have been as dramatic then, it would not have happened so fast.

The reality of the situation is that, as a retailer, unless my competitor starts buying low-sulfur fuel prior to the actual start of the mandate and his costs go up in addition to mine, I am not going to buy it because it will give him a competitive advantage. So, what happens in the marketplace is no one will comply with the mandate until it actually begins.

So on October 1, all the retailers across the country drained the distribution system very quick. And the distribution system in the United States works if there is a ratable continuous flow of product, but what happened was there was a huge demand spike created on October 1. Then coupled with problems with pipelines and various things like that, it did cause a spike. And prices have started to come back down.

Senator EXON. If all of this is accurate, would you say it would be logical that by December 1 or December 15 the new sulfur price plus the increased tax would average out somewhere around 10 cents a gallon more than the prices before October 1? Would that be your expectation?

Mr. SUSICH. Yes, that those two factors combined with nothing else being involved, that was the anticipated price increase, was around 10 cents.

Senator EXON. What do you, Mr. O'Connell and Mr. Trout, think of that? I mean, you have been through it. Do you agree that there may be some explanation for the temporary spike, as difficult as it was?

Mr. TROUT. I was interested to hear what he said. I had never heard it like that. That makes some sense. I guess the problem—there are probably a lot of reasons why it went up; I do not think there are enough reasons for how high it went up. That is my problem. Right now in Arizona it is $1.34. In Colorado it is $1.38. In Idaho it is $1.44. In Nevada it is $1.44. It is still up.

Now, I will be the first to admit that our fuel is coming down. As an average, our fuel is coming down, getting fairly close to where we were when we started, pretty close to that 10 cents you are talking about. But what happened to get it up there and can we find out so that we can make sure that it does not happen next time? Go get whoever—you know, whatever caused it, let's eliminate it so we do not have to go through this again.

Senator EXON. As you know, we are checking into that. I am not surprised that I have not heard back yet from the Attorney General. It does take time for these things. We have been through similar things before, and we generally received a report back from the examining officers that they found no evidence of price fixing.

Do any of the three of you have any experience or evidence to indicate that the higher than expected prices were coordinated by anyone in the fuel industry? In other words, have you seen or have you anything more than suspicions with regard to possible price fixing?

Mr. TROUT. No, sir.

Mr. O'CONNELL. No, sir.

Mr. SUSICH. No.

Senator EXON. Thank you. My last question Mr. Trout, is should trucking companies be subject to, in addition to all the other things to which we subject them, a new recordkeeping requirement which would require identifying the driver of hazmat materials?

Mr. TROUT. Absolutely not. Senator, we have records in our place that anyone can check anytime. We have got so many extra people in our office to keep track of all of the things that we have to do, if that were to go into effect I just cannot imagine the havoc that would rain on the trucking industry. We would need all kinds of people to keep track of all that paper.

You know, payroll needs a piece of paper, payable needs a piece of paper, logs need a piece of paper, the DOT—it would drive us insane. And I submit to you that there is plenty of data in-house in order to keep tracks of our drivers' logs and our drivers' time.

Senator EXON. Mr. O'Connell, has your group had some experience with the area of recordkeeping which I have brought up?

Mr. O'CONNELL. We have some, and I think I would echo the comments. The trucking industry right now is suffering an enormous regulatory burden, and it is really cutting into the productivity of the industry.

I cited in my testimony, for instance, the example of a gentleman that drove from San Diego to Baltimore that I talked to last Wednesday evening. On a cross-country trip he was weighed, the same truck with the same load, 22 times and he was subjected to 2 complete vehicle inspections.

If you figure it took 10 minutes every time he was weighed and 45 minutes for each vehicle inspection, that driver took more than an extra one-half day to go from California to Baltimore.

And while the owner-operator is not involved with the paperwork burden as a company owner would be, I think the whole issue of the regulatory burden placed on the trucking industry needs to be examined by the committee.

Senator EXON. Let me get back to you for just a minute, Mr. Susich. Mr. Trout testified that they had anticipated a 10-cent increase on October 1. Is it customary for the industry to send out alerts of some type to the truckstops or other retailers of the product regarding an anticipated wholesale price increase so that retailers could help identify these increases and give as much advance notice as possible?

In connection with that question, do you believe that the concerns which Mr. Trout expressed regarding maybe a repeat price spike on January 1 is possible?

Mr. SUSICH. To my knowledge I would say that there is no practice of any forward discussion about pricing among retailers. I would say that there is plenty of documentation through the industry of upcoming changes in regulations. If I am not mistaken, the low-sulfur mandate was actually set in place I believe 3 years ago. So, it was a long time on its way.

Senator EXON. Everybody knew or should have known October 1 that the new fuel requirement was going into effect. Did they have any idea, though, whether it was going to be a nickel or 10 cents or 50 cents?

Mr. SUSICH. Through the month of September, I would say that they probably started to receive price notification from their suppli-

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ers of what the new prices were, because as I said earlier the product was available through the latter part of August and into September. But, again, until forced to purchase a higher priced product they did not do it.

Senator EXON. They did not do so.

Mr. SUSICH. Right.

Senator EXON. But what about this January 1 problem which we have heard about? Do you think Mr. Trout has a valid point about having a repeat of this situation on January 1, 1994?

Mr. SUSICH. I am not exactly certain. I would say that it appears so far that the petroleum industry absorbed most of the fixed costs, the capital expenditures of gearing up to produce low-sulfur fuel, and for the most part simply the additional production costs are being passed on.

If the implementation of dyeing systems throughout the country—if that same process happens where the refiners and the marketers absorbed the capital expense of putting those systems in place, then I would not anticipate, unless there is a huge additional cost of dye, that the price would go up much.

Senator EXON. One last question, then. About this matter of low-sulfur fuel as I understand it, not being mechanically inclined, it has something to do with an O-ring that allows leakage into the engine. When this new, low-sulfur fuel was mandated years ago, were tests not done to see whether or not this would have any ill effect on truck engines in use at that time?

Mr. TROUT. I wish that there was. But obviously, I think that the newer tractors are not having problems with that, Senator. I think the tractors over 2 or 3 years are having the problem, and I do not hear about an awful lot of those problems from our drivers. However, they are owner- operators and they do their own thing.

I will say, though, that if they had a serious problem I would know about it. I know about 2 or 3 of them in our group of 200.

Senator EXON. Do you have older tractors in your operation?

Mr. TROUT. The oldest tractor we have—we hire our owner-operators, and they have to bring a truck that is no later than 5 years old, and so we probably have, I do not know, maybe one-half of the fleet—well, not quite one-half, probably one-third of the fleet that is may 4 or 5 years old.

Senator EXON. Though you have not had a serious problem, that does not mean that there is not a problem.

Mr. TROUT. Right. If there was a serious problem, sir, I think I would have known about it.

Senator EXON. Mr. Trout, I will check with the Department of Transportation about these regulations and see what we can do about them. I appreciate your bringing this to our attention. Is there something else anyone else wants to add?

Mr. O'CONNELL. Senator, if I could respond to your question about the engine damage, we, the members of OOIDA and owner-operators typically are small business truckers that own one to three trucks, and they maintain them almost as a hobby car would be maintained. And it is older equipment generally, and it is very well maintained. And that is, I think, why we are experiencing more of the difficulties and more of the reports of the engines.

The typical owner-operator truck is about 7 years old on average. And just as they were coming down Independence Avenue the other day I spotted a 1973 in there that looked like a brand new truck, but those sorts of engines are in the owner-operator fleet and they are I think getting hit a little more severely with that problem.

Senator EXON. Thank you very much for being here. It was very interesting testimony and we appreciate it. You are excused.

I will call panel No. 2 at this time. Mr. John A. Stitzell, general manager of marketing of the Amoco Oil Co.; Ms. Delia Moon Meier, the senior vice president of Iowa 80 Truckstop, Inc.; and Mr. Tom Donohue, no stranger by any means to this subcommittee, the president of the American Trucking Associations.

Before I recognize our first witness I ask unanimous consent that a statement from GiGi Kupitzky of the United Drivers of America be included in the record. Without objection, that is so ordered.

Mr. John Stitzell, I believe we will start with you. I thank you and the other witnesses at the table with you for being here to help us with this matter.

STATEMENT OF JOHN A. STITZELL, GENERAL MANAGER, MARKETING, AMOCO OIL CO.

Mr. STITZELL. Good afternoon. Thank you, Chairman Exon. I am John Stitzell, general manager of marketing and customer support services for the Amoco Oil Co., and I appreciate this opportunity to testify before you today.

I am prepared to provide Amoco's perspective on the diesel fuel supply problem recently experienced in the Midwest. While I cannot comment on how other companies responded to the diesel fuel supply disruptions, I will do my best to explain how Amoco's operations were impacted by marketplace conditions.

Amoco is the Nation's leading marketer of gasoline and has been a primary supplier of diesel fuel and other distillates in the Midwest for many years. In fact, our refinery in Whiting, IN is the Nation's largest inland refinery. We are proud of our reputation as a responsible corporate citizen and supplier of high quality products.

This fall, the transportation fuels market was affected by two new requirements: the U.S. EPA's low-sulfur diesel fuel regulation and an increase in fuel taxes, both of which went into effect on October 1.

The low-sulfur diesel regulation required refiners to reduce the sulfur content of on-highway diesel fuel by about 80 percent to a maximum level of .05 percent sulfur. To meet these requirements, Amoco invested about $300 million in desulfurization units at our two largest refineries and made other changes within our distribution system to provide this fuel to our customers.

The manufacturing and distribution cost of bringing low-sulfur diesel fuel to market increased by several cents per gallon. So, coupled with the 4.3 cents per gallon increase in Federal excise taxes, the diesel market experienced a major change effective October 1.

While the low-sulfur diesel program required significant new capital investment within Amoco's system, we began planning early to ensure that adequate supplies would be available. To this end, Amoco contacts its diesel fuel customers on a regular basis to de-

termine their projected product needs. Then, based on this customer feedback, we forecast sales and required refinery runs 1 to 2 months before actual sales will occur at each of our product terminals.

As a result of this planning, Amoco was one of the first suppliers to have the low-sulfur diesel in its terminals almost a month before EPA regulations requiring this fuel were to take effect on October 1. Based on our customer surveys, we believed we had an ample supply of this product for our customers.

However, due to several extraordinary circumstances in the Midwest, many customers delayed product purchases until just a few days before the October 1 implementation date. This buying pattern created a huge demand spike that overextended the industry distribution system's ability to deliver.

A number of Amoco's terminals sold low-sulfur diesel at several times the forecasted levels during the 2-week period bracketing October 1. In fact, we sold a whole month's product in a couple of days at one of our terminals. Overall, during this period Amoco sold low-sulfur diesel at a rate 50 percent higher than our planned levels.

In retrospect, we believe the demand spike occurred in part because many customers, in managing their own inventory and cashflow needs, were not able to buy and build inventories of a higher cost low-sulfur product until absolutely necessary.

Another factor was the fall harvest, which was pushed back to late September due to earlier flooding followed by subsequent dry weather in the Midwest.

Under more normal circumstances, when the demand for a product exceeds the available supply in a given market, Amoco tries to divert product from one terminal to another to meet that greater need. However, due to recent flooding that caused an unscheduled shut down of the Explorer pipeline, and due to related outages on the Williams line, there was a severe shortage of low-sulfur fuel in the Midwest and Great Plains States.

For example, we purchased more than 250,000 barrels of low-sulfur diesel through the spot market to replace what we could no longer obtain through the Explorer line. The spot or open market can be quite volatile and typically responds very quickly to the changes in the delicate supply demand balance. As a result, Amoco's diesel fuel purchases were made at a higher cost.

The pipeline shutdowns, the last September run on distillate inventories, and the compressed harvest season also drove up market prices, thereby compounding the effects of the 4.3-cent-per-gallon Federal fuel tax increase and the higher costs associated with producing low-sulfur diesel fuel.

It is worth noting that Amoco's eastern and southern markets, which were basically unaffected by these unusual circumstances, have not experienced such product shortages or price distortions.

Amoco conducts business in an intensely competitive marketplace where product pricing is related to supply and demand conditions. Amoco continues to believe that a competitive market does the best job of delivering products to meet our customer's needs.

Amoco has made and will continue to make every effort to supply our customers with low-sulfur diesel fuel. Despite severe product

shortages and widespread price increases throughout the industry, Amoco has been able to maintain competitive wholesale prices and resume near normal distribution.

In fact, diesel fuel prices have been steadily decreasing in the Midwest since late October, and the supply of distillates is coming closer to meeting the demand industry wide.

The reason for this recovery, we think, is that the marketplace works efficiently despite the impact of new regulations and extraordinary circumstances that disrupted the normal supply demand balance in the Midwest. It takes some time for the market to adapt to such changes, especially when they are all occurring at the same time. The last 2 months have unquestionably strained the distillate market, but the situation is now returning to normal.

Thank you very much. I will be happy to answer your questions later.

[The prepared statement of Mr. Stitzell follows:]

PREPARED STATEMENT OF JOHN A. STITZELL

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Another factor was the fall harvest, which was pushed back to late September due to earlier flooding, followed by subsequent dry weather, in the Midwest.

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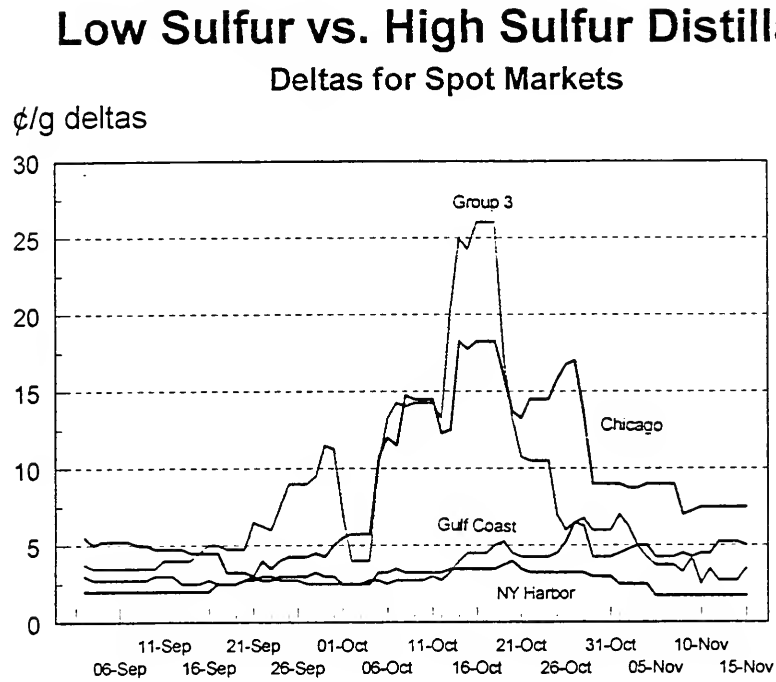
The last two months have unquestionably strained the distillate market. But now the situation is returning to normal.

Thank you.



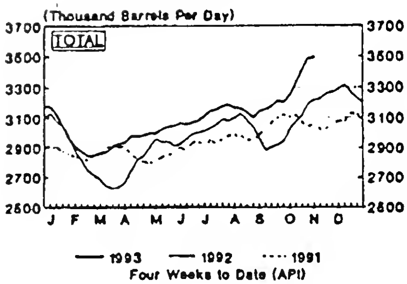
SPOT MARKET DIFFERENTIALS.—The above chart shows the price difference between low-sulfur and high-sulfur distillate for the four key spot markets: Gulf Coast, New York Harbor, Chicago, and Group 3 (Great Plains and Midwest). This data is referenced from the Platt's Oilgram spot market price which is published daily. The chart shows the increase in differential, related to supply issues, for the two midwest markets. It is interesting to note that in the Gulf Coast and New York Harbor markets there were basically no supply disruptions and spot prices do not show price spikes. Prices respond to market conditions, including supply and demand, and currently the Group 3 spot market differential is less than that in the Gulf Coast spot market.

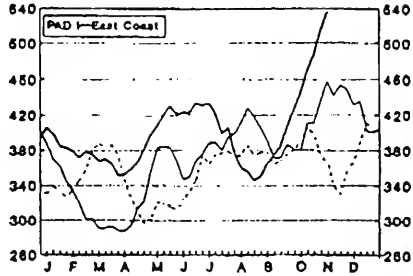
U.S. DISTILLATE PRODUCTION AND INVENTORIES

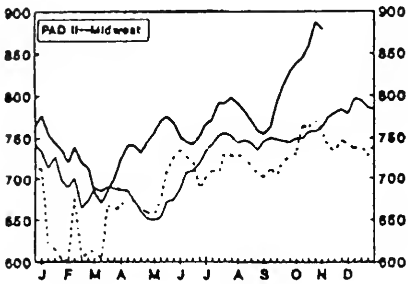
Attached are three pages of graphs showing U.S. Distillate Production by PAD, U.S. Distillate Inventories by PAD and U.S. Low Sulfur Distillate Inventories by PAD. The information is compiled by the API on a weekly basis.

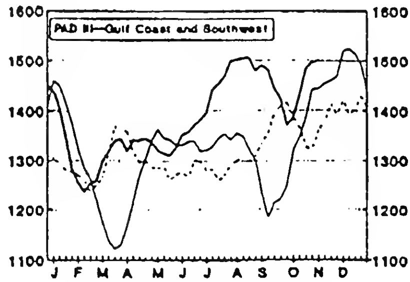
During the late summer months, the Midwest distillate inventories were drawn down to enable high sulfur distillate storage tanks, which were slated for conversion to low sulfur service, to be emptied, opened, cleaned, inspected and returned to service. As the tankage became ready for the new low sulfur distillate service, Midwest refiners increased the production of distillate to the highest level in at least three years. This was done in preparation for the low sulfur distillate rollout as well as the normal spike in demand due to farm sector harvest activities. U.S. and Midwest low sulfur inventories started to increase in late July in preparation for these activities. Despite the improving inventories and the high production, farm sector demand and the transition to low sulfur distillate overwhelmed the industry's ability to supply. On October 1, the Explorer pipeline shut down for about a week as the result of flooding on the Missouri River. Since the Explorer pipeline restarted operation, the supply of low sulfur distillate has continued to improve.

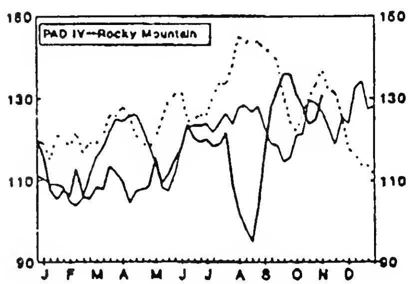
U.S. Distillate Production by PAD

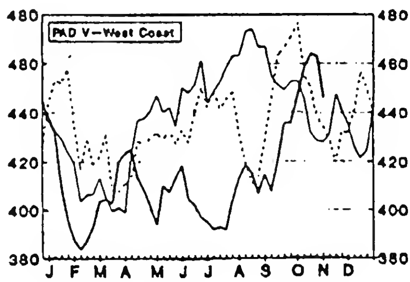




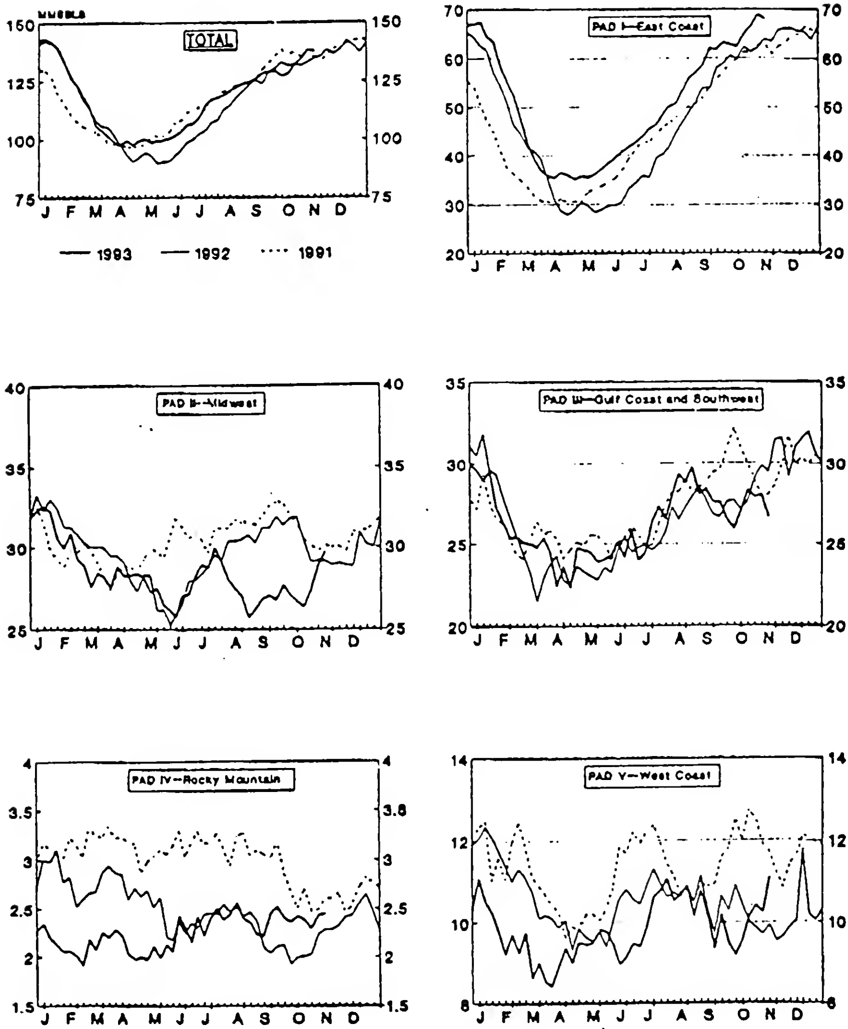




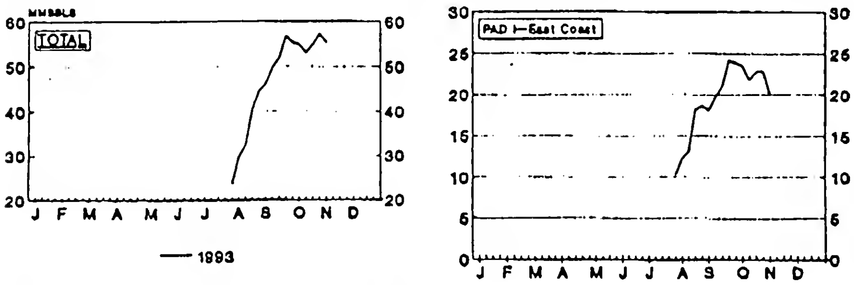




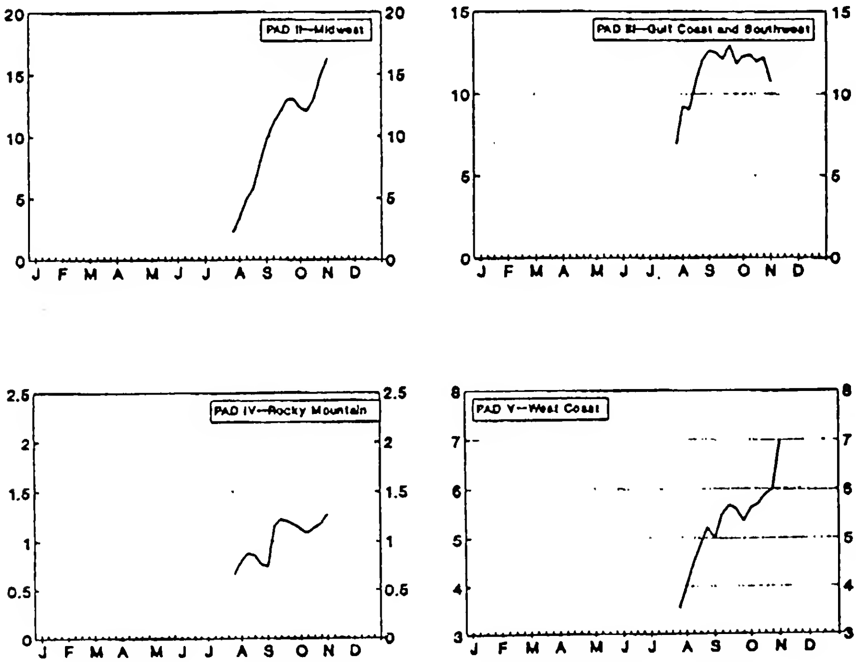
U.S. Distillate Inventories by PAD*



U.S. Low Sulfur (.05%) Distillate Inventories by PAD*



These inventories are included in total distillates.



Senator EXON. Mr. Stitzell, thank you very much. I will now move on to Tom Donohue. Tom, it is good to have you back again. Please proceed. All of your records, as previously ordered, have been accepted in full as a part of the record. Please continue with your summary statements.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

Mr. DONOHUE. Thank you, Senator. And thank you, to you and your colleagues, for arranging the schedule this afternoon that let

us do our satellite TV show and then still be here. I raced over here, within the speed limit, to participate in your event.

We have also with us, Ken Simonson, the chief economist for ATA, if we should get into any technical matters that are above the things that I might be able to deal with.

Senator EXON. Fine.

Mr. DONOHUE. What I would like to do is to recognize that many of your witnesses have already covered matters that are in my oral statement. So, I will just make a few quick points; and then, at your convenience, we can go on to the questions.

It is important to recognize, while we are considering the problems of the trucking industry in this matter, that we do represent 1 out of every 12 workers in the civilian workforce in the United States: almost 8 million people. And that we do carry the greatest portion of freight, more than 70 percent of the dollar value of everything that is moved. In the States that are represented by the Senators here, a large, large portion of the freight moves by truck.

We expected the problems that are under discussion here. We are here to talk about them, not from looking to the past, which we will do for educational purposes, but to look to the future.

This industry is going to get bigger and bigger and bigger. In fact, over the 73 months from now to the end of the decade, while the railroads will continue to expand in a major way their intermodal freight, we are going to increase the amount of freight we carry by 28.5 percent. The amount of miles we travel will increase by 26.5 percent; and in the States represented here, even a larger increase in truck travel to move the freight that results from a growing economy.

So, we are very concerned. As you know, we had the simultaneous increase of Federal fuel tax, and the switch to low sulfur. You heard Mr. Trout and everyone else talk about the numbers and, I thought, a very excellent explanation of some of the causes of the price increases. But prices are still far above the level that we all expected.

While we are not making any accusations, because I have my own sense that no one party caused this to happen, we did contact the White House. We asked the President to put somebody in charge of looking at all these problems together, as the Senator indicated before.

And we asked the Attorney General to make an inquiry. I think we did that more in a prospective way than we did in a historical way because, as you say, it takes a long time to get a response. But we have gotten a response that they are looking into it.

Now I want to say upfront that we have gotten some help from the Government. The Environmental Protection Agency moved very, very quickly, when the pressure was at its height, to let us shift back and forth between the two fuels. The ICC, whose procedures are far more complicated and which takes votes of independent commissioners, while it took a little longer, did help out in some of the pricing arrangements. We were allowed to change some of our pricing practices.

Now, several lessons emerged from this whole thing. The one that strikes me most is the fact that Government does not always look at what happens when they do two or three things at once,

and what happens down the stream. I think what I am most concerned about is, that those lessons are going to be put to the test again in the immediate future.

The first reason is that we are going to have diesel fuel of every type of color. We just did a television show on this; in fact, I should have brought you the film we did. It is going to look like ice cream sundaes. This becomes even more complicated when you stop and think about the point that was raised here a minute ago.

In the past when we came to the really cold weather, we could take diesel fuel that was waiting around to go in trucks, and we could run it into the homes in Nebraska and Texas and other places, and burn it as home hearing fuel. And then, when we would get to the harvest, and we would have all sorts of trucks that had to get going, we could take some of that home heating fuel that we had laying around at the local distributor, and we could put it in trucks.

Now we cannot do that anymore. Because we have to have various different colors of diesel fuel, depending on who you are, and which Government agency you are dealing with.

You see now, EPA, they like certain kinds of colors; and then, the IRS, for the nontaxed fuel, they are going to another color; and then nonhighway fuel—I cannot figure it out. I can assure you that the distributors cannot figure it out. And surer than you can jump up and down, the truckers—particularly, the small truckers—are never going to figure it out.

If you stop and think that 70 percent of the truckers in this country probably have 10 or fewer trucks, how many fuel storage tanks do you think they can have? And this situation is an example of Government getting out of control, with everyone having a good intention.

So, here we are, the prices are still up, more than we would like. Why? Well, they have good reasons, maybe; but we need to deal with it.

We are now trying to do the clean air thing. Remember, the trucking industry fought to have clean diesel used, as a part of the Clean Air Act; and then had to fight to keep it in the energy bill. Congress was going to require something else. And we had to fight to keep the NAFTA agreement assuring it in Mexico.

So, we have it, we want to clean the air even though trucks are such a small percentage of the pollution going in.

The second issue is, of course, what is going to happen when cold weather happens? I just hope that this committee could keep, not the heat, but press the inquiry with the DOT and the White House and the EPA and the IRS. Let us get some color system that the oil companies can produce in an orderly fashion; that the distributors can accumulate in an orderly fashion; and the truckers can use in an orderly fashion.

There are always going to be extenuating circumstances: storms, snow, cold, frost, thaws, crops, no crops; whatever it is. But, 5 million trucks in this country, about 3 million of them using diesel, have to go every day to deliver the Nation's goods. And it is getting tough.

We come here today, thankful for the many things that this committee has done for us before; and hoping that we, together, can look to the future, so that we do not have this problem again.

I want to make the point that we are not pointing fingers at oil companies, we are not pointing fingers at that whole daisy chain of the guy who gets the crude and refines it and sends it to the wholesaler, and then the distributor and the truckstop. But if everybody takes a little something for Christmas along the way, it is a hell of a costly present. And we are paying for it.

So, thank you very much, sir. We look forward to answering your questions.

[The prepared statement of Mr. Donohue follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE

My name is Thomas J. Donohue. I am president and chief executive officer of the American Trucking Associations (ATA), the national trade association of the trucking industry. On behalf of the more than 30,000 companies that belong to ATA or its 51 state associations and 11 specialized national affiliates, I appreciate the chance to testify on the industry's experience and lessons learned from the recent switchover to low-sulfur diesel fuel.

The trucking industry supported the switch to low-sulfur diesel as an affordable, environmentally sound step that was widely expected to cost just 3-7 cents per gallon and cause no supply or operating disruptions. Unfortunately, prices soared by as much as 40 cents, including a 4.3 cent tax increase that took effect the same day; supplies nearly ran out in many markets; and thousands of trucks broke down. For the long run, the fuel market has become more volatile, making future price spikes and supply shortages more likely.

Government can help. The Environmental Protection Agency (EPA) twice provided timely, limited relief. The Interstate Commerce Commission (ICC), after considerable delay, allowed common carriers to put fuel-related tariff increases into effect on one day's notice.

Very soon, diesel markets will be subjected to more strains as new tax compliance rules mandating dyeing of nontaxable fuel and earlier collection of fuel tax take effect on January 1. Some carriers may have trouble finding clear fuel for highway use, especially if they have been using colored additives or blending in kerosene or used oil. The likelihood of temporary or regional price and supply problems will be magnified further. We hope the Internal Revenue Service (IRS) can learn from this episode and minimize disruptions when it puts new collection point and dyeing rules in place. And we hope Congress and the White House will also be willing to step in if needed.

ECONOMIC IMPORTANCE AND FUTURE OF TRUCKING

The trucking industry employs 7.8 million Americans. It accounts for approximately 5 percent of gross domestic product (GDP) and 78 percent of the nation's expenditures on freight transportation.

A recent analysis of where the industry is headed by the highly respected transportation information consultant Martin Labbe Associates for ATA revealed some interesting trends. Over the period 1991-2000, the industry is projected to experience substantial growth: tonnage carried by trucks will be up 28 percent, the number of heavy, or Class 8, tractors will grow by more than 10 percent, and the mileage those tractors travel will rise by 28 percent. This growth will occur if real GDP goes up by just 2.5 percent a year, a rate many forecasters expect will be exceeded. The growth rate also assumes even more rapid growth in rail and intermodal traffic, changes that may not be possible due to infrastructure limitations.

These projections carry a number of important implications. In particular, the demand for trucks—and the highways on which they run—will continue to grow. It will be important to maintain a healthy trucking industry and a well-designed, well-built and well-maintained national highway system in order to achieve even the modest GDP growth assumed in the study.

Jobs and economic growth cannot happen without good transportation. Since 75 percent of the communities in the United States have freight delivered only by truck a healthy trucking industry is vital to the well-being of the entire nation.

BURDEN OF TAXES AND REGULATION ON TRUCKING

Unfortunately, government has tended to look on trucking as a cash cow. An analysis by ATA of the annual gross income and government-imposed costs for a typical tractor-semitrailer combination found that the truck grosses roughly $88,000 per year. However, 40 separate taxes and regulatory costs imposed by federal, state and local governments eat up almost $32,000, or 36 percent, of that total. These burdens are shown on the following table.

ANNUAL GROSS INCOME OF ONE INTERSTATE TRACTOR-SEMITRAILER COMBINATION:	$88,000	100.0%
ANNUAL GOVERNMENT-IMPOSED COSTS FOR ONE INTERSTATE TRACTOR-SEMITRAILER COMBINATION:		
I. FEDERAL TAXES - Annual Costs per Truck -		
Fuel Tax	$2,821	
Deficit Reduction Fuel Tax	604	
Heavy Vehicle Use Tax	550	
Tire Tax	84	
Vehicle Excise Tax	1,600	
Subtotal - Federal Taxes:	$5,659	6.4%
II. STATE & LOCAL TAXES - Annual Costs per Truck -		
Fuel Taxes	$2,837	
Vehicle Registration Fees	1,238	
Weight-Distance Taxes	680	
Tolls	811	
Insurance Registration Fees	259	
Decal Fees	141	
Trip Permits	130	
Hazardous Waste Fees	11	
Environmental Fees	25	
Subtotal - State & Local Taxes:	$6,132	7.0%
Total - Federal, State & Local Taxes:	$11,791	13.4%
III. MANDATED COMPLIANCE COSTS - Annual Costs per Truck -		
Operating Tax Compliance	$1,480	
Low-Sulfur Fuel	561	
Reduction in Vehicle Emissions	500	
Fuel Storage Tanks	75	
Storm-Water Runoff	127	
Community Right-to-Know Laws	12	
Hazardous Waste Disposal	187	
Human Resources Mandates	1,000	
Drug & Alcohol Testing	169	
MCSAP Inspections	150	
Terminal Inspections	100	
Hours-of-Service Compliance	1,434	
Vehicle Maintenance Compliance	60	
Driver Qualification	65	
Hazmat Regulations	318	
Equipment Standards	333	
Total - Government Regulation:	$6,571	7.5%
IV. GENERAL BUSINESS TAXES AND COMPLIANCE COSTS - Annual Costs per Truck -		
Employment Taxes	$3,112	
Corporate Income Taxes	721	
Property Taxes	830	
Sales & Use Taxes	358	
Franchise & Business Taxes	10	
Gross Receipts Taxes	13	
Unemployment Taxes	1,400	
Business Tax Compliance	88	
Workers' Compensation	7,000	
Total - General Taxes and Compliance:	$13,532	15.4%
Grand Total - Government-Imposed Costs:	$31,894	36.3%

Those costs rose nearly $1200 on October 1 of this year, when two new provisions took effect. First, the general fund fuel tax jumped 4.3 cents per gallon as mandated by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Second, trucks were required to switch to low-sulfur diesel fuel, as mandated by the Clean Air Act Amendments of 1990.

Yet the trucking industry's profit margin is only about 2 percent of revenues. Clearly, if the industry is to survive, let alone prosper enough to serve the economy's growing demand for freight movement over the rest of the decade, carriers must be spared unnecessary and unexpected cost increases and be able to pass along significant increases that do occur in a timely fashion.

There are a number of lessons to be learned from what happened before and after October 1 that may help industry cope better with future government-imposed changes.

ANTICIPATING THE SWITCH TO LOW-SULFUR DIESEL

The requirement to use low-sulfur diesel fuel beginning October 1 had been long known and widely publicized. The mandate resulted from years of discussion among oil refiners, truck and engine manufacturers, the trucking industry and the EPA. EPA had originally sought a way to reduce emissions as required by the original Clean Air Act of 1970. Even though the trucking industry had invested billions to reduce the already small share of air pollution caused by trucks, ATA supported efforts to achieve further reductions in diesel emissions. We successfully pressed refiners to reformulate diesel fuel rather than force truck owners to go to untried fuels

and equipment. The resulting agreement was put into law in the 1990 amendments, with an October 1, 1993 effective date. ATA supported those amendments as well as further legislation to encourage reformulated diesel in the Energy Policy Act of 1992.

Both government and refining industry sources estimated the added cost of low-sulfur diesel fuel would be 3-7 cents per gallon. In California, low-sulfur diesel fuel had been required in Los Angeles since 1985. It was initially sold for 2-4 cents per gallon more than high-sulfur diesel, and the average price spread between Los Angeles and San Francisco, where low-sulfur was not required, was 3.2 cents greater in 1985-88 than in 1981- 84. No equipment problems had been blamed on low-sulfur fuel in California.

According to the Department of Energy, on-highway use of #2 oil or middle distillate accounts for about 46 percent of the total market. Off-highway uses, including home heating oil, farm, rail, and motorboat use, account for the rest.

There are a number of ways refiners can produce low-sulfur fuel. Once produced or blended, it must be kept separate from high-sulfur fuel throughout the distribution chain: pipeline, underground or aboveground storage tanks and tank trucks. In particular, fuel distributors and retailers must in many cases invest in additional storage tanks or elect to serve only one type of customer—highway (truckers) or off-highway (farmers, homes and others).

SUPPLY PROBLEMS; EPA'S RESPONSE

Although refiners announced plans to install enough capacity to meet the national demand for low-sulfur diesel fuel, they did not actually produce or offer enough by early September to enable bulk buyers to line up assured supplies. Consequently, ATA wrote to the EPA asking for temporary relief for carriers unable to find sufficient low-sulfur fuel. On September 16, EPA announced that carriers would have 60 days to use up sulies of high- sulfur fuel in storage tanks if the fuel had been purchased before October 1. Sales of high-sulfur fuel to truckers continued to be banned after September 30.

However, supply problems intensified in early October. The Explorer pipeline, a major carrier of petroleum products from the Gulf Coast to the entire Midwest, was forced to shut down for several days to correct potential flood damage. A number of crude oil pipelines supplying midwestern refineries with raw material to make low-sulfur diesel also shut down. As a result, many marketers ran out of fuel for a time, and tank trucks sometimes had to travel hundreds of miles to make deliveries, at an added cost of up to 16 cents per gallon.

A further complication arose in California and surrounding states. The California Air Resources Board (CARB) required most diesel fuel suppliers to sell a new, low-sulfur, low-aromatics diesel fuel, also beginning October 1. (Aromatics are naturally occurring chemical components of petroleum that contribute to smog formation.) However, CARB did not require purchasers to use this fuel if they chose to purchase fuel out of state. Because "CARB fuel" cost even more than the low-sulfur diesel available elsewhere, the demand for low-sulfur diesel in bordering states soared. Truckers running into California and even California- based truckers in border areas bought fuel out of state whenever possible. Spot supply shortages were reported in those areas. Meanwhile, supplies of CARB fuel were also low initially as some refiners had trouble getting production going in time.

In response to requests from ATA and others, EPA announced on Friday, October 8 that it would allow fuel sellers and purchasers to sell and use high-sulfur fuel if low-sulfur fuel was unavailable without undue hardship. This concession was put in place through October 22, with the understanding that EPA would review the situation again. On October 22, EPA announced that it had not heard of any continuing supply shortages and therefore would not extend the waiver.

CARB also held an "emergency" meeting at the request of Governor Wilson, following protests by the California Trucking Association, farm groups and other. CARB agreed to suspend the requirement for farm and other nonhighway users to use CARB fuel, but trucks were not granted relief.

The midwestern pipelines began operating again around October 10 and supplies steadily improved. In other regions where supplies had been tight, the situation gradually brightened as well. No shortages have been reported in the last month.

PRICE CHANGES

Diesel prices hit a low for the year in August. The ICC's weekly survey of 18 truck stops bottomed out at 109.2 cents a gallon for self-service fuel on Monday, August 23. The price climbed roughly a penny a week for the next month as low-sulfur diesel was introduced gradually and output of high-sulfur diesel was curbed. By Sep-

tember 27, the price was up to an average of 114.1 cents, an increase of 4.9 cents in five weeks.

The next week, after the 4.3-cent tax increase and the low- sulfur mandate took effect, the price jumped a total of 6.6 cents, to 120.7 cents. By October 18, the price had climbed another 6.8 cents, to 127.5 cents, for a cumulative increase in the eight weeks since August 23 of 18.3 cents per gallon, of which only 4.3 cents was attributable to the tax change.

In the four weeks since October 18, prices have dropped by less than a nickel, to 122.6 cents in the November 15 survey. Thus, the net change in retail prices since August 30 has been 14.7 cents, of which only 4.3 cents is attributable to the tax increase. The changes in the ICC survey are shown in the chart on the next page.

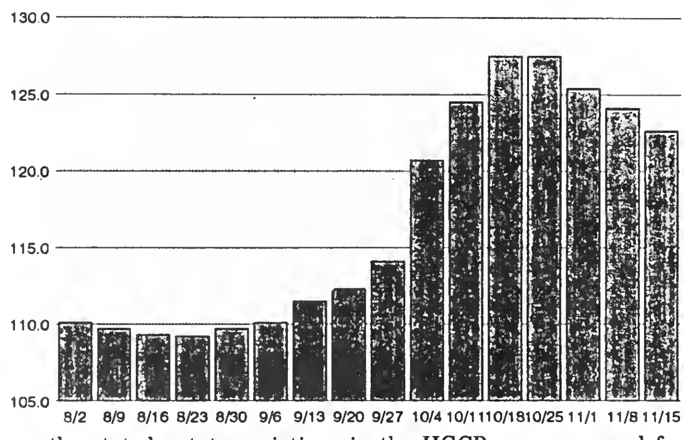
These nationwide average prices mask much more extreme upswings in statewide averages, let alone individual truck stops. Carriers reported a large number of truck stops that had raised prices as much as 40 cents per gallon.

State-by-state prices are compiled by the Household Goods Carriers Bureau (HGCB). HGCB surveys of more than 350 truck stops were conducted on August 2, September 7, October 4 and 18, and November 1. The nationwide average retail price for self- service fuel in these surveys rose 18.7 cents from 110 cents on August 2 to a peak of 128.7 cents on October 18, before dropping back to 127.1 cents on November 1. This pattern was almost identical to the ICC's survey.

DIESEL PRICE INCREASES

Weekly August - November, 1993

Source: ICC Fuel Index



However, the state-by-state variations in the HGCB survey ranged from an increase of 35 cents a gallon in Nebraska to 4.3 cents in Rhode Island. Half of the 48 contiguous states had increases of more than 20 cents per gallon at one time or another, and four had increases of at least 30 cents: Nebraska, 35; California, 33.6; Wisconsin, 30.4; and Illinois, 30. (Prices in all four declined from October 18 to November 1 but remained at least 24 cents above their lows in August. Prices in Rhode Island on November 1 were only 1 cent higher than in August, far less than the 4.3 cent tax increase.)

HGCB also computes regional averages. These reveal that the price jumps were almost entirely west of the Ohio and Mississippi Rivers. The averages for HGCB's New England, Mid-Atlantic, and Southeast regions rose no more than 11 cents per gallon, as had been forecast originally. But in the Great Lakes, Midwest, Southwest and West the regional average prices climbed between 23 and 28 cents per gallon.

RESPONSE OF THE ICC

ATA petitioned the ICC on September 2 to mandate a fuel surcharge to cover the expected cost of the tax increase and low-sulfur fuel. Alternatively, we sought authority to file fuel-related tariff increases on one day's notice. The ICC had approved

such a procedure in the winter of 1990 after a prolonged cold wave had pushed up the demand for heating oil and sent the price of all #2 oil soaring and again after Iraq's invasion of Kuwait pushed up diesel prices. This time, the ICC rejected any relief.

ATA renewed its request for one-day notice on October 12. We included extensive documentation of how rapidly fuel prices were increasing and how the increases far exceeded all forecasts. We added to that documentation on October 18. The ICC finally granted our request for one-day notice on October 29, after carriers had already had to absorb millions of dollars in higher fuel costs. This "special tariff authority" will expire on December 13. Furthermore, it does not help contract carriers that lack a fuel price adjustment in their contracts.

EQUIMENT PROBLEMS

In addition to supply shortages and price spikes, many carriers have had to cope with a rash of unanticipated equipment problems. The most common problem is deterioration of 0-rings on fuel pumps of pre-1990 engines. The o-rings have leaked, forcing trucks to be taken out of service for as much as a day. The problem typically costs $100-$500 to fix if caught in the terminal, and more if the vehicle must be towed in from a highway location. In addition, carriers suffer a loss of revenue when the vehicle is out of service. Scattered other equipment problems have been reported as well.

Although the source of the problems has not been tracked down with certainty, it appears to be related to a different chemical composition of the new fuel. The low-sulfur fuel typically has a lower percentage of aromatics. Aromatics are absorbed by the synthetic rubber of the o-rings. The lower aromatics of the new fuel caused the aromatics in the o-rings to leach out. Then the o-rings shrank and cracked, enabling fuel to leak from the fuel pump.

Replacing the o-rings has fixed the problem in all cases reported so far. But it will take many more miles of using low- sulfur fuel to be sure no other premature changes occur in equipment.

WHERE DID THE MONEY GO

The underlying crude oil and #2 oil markets have been very quiet. The price of West Texas Intermediate crude oil as traded on the New York Mercantile Exchange, was around $18 a barrel for most of August and closed at $16.77 a barrel on November 16. The price of #2 oil traded for 51-53 cents a gallon in August and closed at 51.13 cents on November 16. One refiner recently told ATA its cost of producing low-sulfur diesel was only two cents per gallon higher than for high-sulfur.

In short, there is no fundamental market reason for the price of low-sulfur diesel fuel having risen 18.3 cents per gallon (including the tax increase) nationwide. Nor should the price have stayed more than 13 cents higher than its late-August level six weeks after the effective date of the low-sulfur mandate. Someone has made enormous profits from low-sulfur diesel fuel at the expense of truckers.

In light of these inexplicable, long-lasting increases and extreme regional variations, ATA on November 8 wrote President Clinton and Attorney General Reno to ask them to investigate what has occurred. Specifically, we asked the Justice Department to launch an immediate investigation into the enormous, sudden, and sustained increases in diesel motor fuel prices in certain sections of the country. We asked the President to appoint a senior member of the White House staff to work with the appropriate agencies and with us to resolve the problems.

PROBLEMS IN THE NEAR FUTURE

Reports in the last few weeks have largely been favorable with regard to supply, price and equipment problems. But the situation has not returned to "normal." Prices in more than half the country remain higher than was forecast. Equipment failures continue to be reported, especially in California. The relationship of price differences from one region to another has apparently been altered on a long-term, probably permanent, basis, which will cause painful market adjustments for local and regional shippers as well as carriers.

Most ominously, the fuel market has become much more susceptible to supply and demand shocks: sudden supply interruptions, surges in demand from cold weather, and loss of flexibility on the part of product vendors and buyers. Producers must now guess right about the quantities of two products that were formerly interchangeable. Now, if there is a sudden refinery or pipeline shutdown, truckers can no longer buy fuel from heating-oil distributors because their stocks will be high-sulfur, dyed fuel. Similarly, they can no longer use high-sulfur kerosene to produce a low-temperature blended fuel. Conversely, some former heating-oil distributors

will now be stocking only low-sulfur fuel, leaving heating-oil customers with fewer suppliers available if a cold wave sends demand surging.

Government cannot prevent all of the problems that occurred or keep them from happening again. But it is important to provide a sufficient lead time and publicize the changes, so that all parties can make adjustments whenever possible. For instance, carriers that knew the low-sulfur fuel mandate was likely to push up prices had several years to adapt by adjusting their contracts with shippers or hedging their fuel purchases. In contrast, the tax increase took effect just seven weeks after enactment, giving carriers almost no time to adjust contracts, tariffs or fuel-buying practices.

The EPA showed that intelligent use of regulatory discretion can calm markets and ease supply shortages without undermining the thrust of the regulations. Despite EPA's offer to waive the low-sulfur mandate in cases of hardship, motor carriers largely stuck by the change they had already committed to.

Unfortunately, the ICC's unwillingness to grant even modest procedural relief of a type it had approved twice before under similar circumstances was extremely costly for many carriers. ATA intends to press the ICC to make fuel-related one-day tariff notices permanent, or at least to have the authority available on an automatic basis whenever fuel prices go up by a specified amount, so that carriers do not have to wait until prices have risen for two months before getting help.

TAX CHANCES COMING ON JANUARY 1 AND LIKELY IMPACT

These lessons may be put to the test all too soon. On January 1, 1994, new diesel tax compliance rules enacted in August as part of OBRA '93 take effect. The point of collection will move from the wholesale distributor to the terminal rack and the IRS will require that all nontaxable fuel be dyed, most likely a different color from that mandated by EPA for high-sulfur fuel, and that all taxable fuel be clear. Those rules will further fragment the market for #2 oil, increasing the likelihood of regional and short-term supply problems and price differentials. The dyes could even trigger unforeseen equipment problems.

Several types of business are likely to have different problems. Motor carriers that have been blending even low-sulfur kerosene or using dyed additives to keep fuel from gelling in winter or have been burning used oil in their fuel systems will find the resulting fuel is not clear and thus illegal for taxable (on-highway) use. Carriers that have legally been buying fuel for their refrigerated trailers will have to buy tax-paid fuel and apply for a refund or credit. Railroads and pleasure boats will have to use undyed fuel to show they have paid tax, even though EPA allows them to use high-sulfur fuel, dyed blue. The following chart illustrates the complexities.

Fuel Color Rules

Application	User practice (pre 10/93)	EPA	IRS
Truck engine, low sulfur, tax paid.	Grey or various	No color	No color.
Truck auxiliary, sulfur not regulated, no tax.	Grey or various	Blue unless low sulfur	Red [1] unless tax paid.
Rail/motorboat, sulfur not regulated, tax paid.	No color	Blue unless low sulfur	No color.
Farm/furnace, sulfur not regulated, no tax.	No color	Blue unless low sulfur	Red [1] unless tax paid.

[1] Final color not chosen.

RECOMMENDATIONS AND CONCLUSION

First, the Administration should vigorously investigate whether any illegal fuel pricing activity has occurred and take any appropriate steps to assure that the spread in price between low- and high-sulfur diesel quickly reaches expected levels.

Second, the ICC should adopt a permanent tariff-adjustment mechanism so that motor carriers are not unfairly penalized by regulatory delay when price spikes occur.

Third, the IRS should immediately issue regulations and publicity regarding the coming changes in diesel fuel tax collection and dyeing, work with EPA to coordinate dyeing and minimize user problems, and provide adequate staffing to issue prompt refunds to fuel buyers who are entitled to them.

Fourth, the EPA should continue to investigate equipment problems that may be traceable to low-sulfur fuel, be prepared to waive low-sulfur requirements again if localized supply shortages reappear as a result of cold weather or the IRS dyeing

rules, and examine whether the greater simplicity and clean air benefits of low-sulfur fuel for all users outweigh the costs of switching for current high-sulfur buyers.

Fourth, the White House should have a senior official assigned to making agencies as responsive as possible to legitimate concerns of motor carriers and other parties harmed by implementation of new regulatory and tax burdens.

Congress can help by encouraging each of the above actions, by publicizing problems, and whenever possible by providing enough lead time between enactment and effective dates of changes in laws. Agencies need time to write regulations and publicize them before they take effect, and businesses need time to make the necessary adjustments and investments. Congress should also maintain close oversight of the agencies to let them know they are expected to work with affected businesses and citizens and to provide appropriate relief. Agencies should keep in touch with affected parties and make adjustments if needed, as the EPA did.

For our part, ATA stands ready to work with the Congress, the White House and regulatory agencies to achieve goals we agree on, such as clean air and better tax enforcement, in ways that do not unfairly penalize the trucking industry. Only if government shows a willingness to minimize the tax and regulatory costs it imposes on the trucking industry will the industry be strong enough to provide economic growth we all seek for the rest of the century.

Senator EXON. Tom, thank you very much. I am very pleased now to hear testimony from the next witness, because Ms. Meier is out there where the diesel meets the road.

Before, and without charging you any time, is it true, Ms. Meier—I am not questioning my friend, Tom Donohue—that at your truckstop, you have four different pumps like that, for diesel?

Ms. MEIER. Absolutely not. I could solve their problem if they would buy all their fuel from truckstops. We will only carry one fuel type and that is on-road diesel.

Senator EXON. On-road diesel?

Ms. MEIER. Yes.

Senator EXON. But it is the other people who have mixtures, is that right, that have on-road and off-road?

Ms. MEIER. It might be somebody farther up the chain. The people that we buy the fuel from have to carry all the different types. We only carry on-road diesel, because we only sell to truckers.

Senator EXON. So, if the farmer drives up to your place, you do not sell the farmer diesel?

Ms. MEIER. We will sell it to him, but we have to charge the taxes.

Senator EXON. How about this matter with different colors? Were you just trying to overemphasize the point, Tom, about how difficult this is? You really are not saying that we are going to have four different tanks? You were just using that to describe the difficulty of the problem; is that right?

Mr. DONOHUE. We are sure going to have four different tanks in Nebraska. Because the people that are off-road vehicles do not want to use on-road fuel, because the cost is a lot higher. Big time. And we are also going to have people that, even in the trucking business, that are going to be looking for their rebates for running their reefers or other machinery that is not considered on-road fuel.

The point is, and the question about the truckstops is correct. But the point is that, over the years, we have moved this fuel back and forth, you see. When we have had a frost, when we have had the need for heating oil, when we needed fuel for the harvest or for the busy Christmas season.

Senator EXON. Now you cannot do that?

Mr. DONOHUE. Now you cannot do that. So, what you need is more fuel in the first place, in the right place, which is difficult to do when you have to sit around and estimate when it is going to snow and when the demands are going to go up and down. And that is going to be a difficult problem for the truckstops; and one of the reasons they may be paying some more for the fuel.

Ms. MEIER. I agree.

Senator EXON. Thank you. Please continue, Ms. Meier. I am sorry I had to interrupt you, but I want to understand that point a little better than I did.

STATEMENT OF DELIA MOON MEIER, SENIOR VICE PRESIDENT, IOWA 80 TRUCKSTOP

Ms. MEIER. Oh, that is fine. Mr. Chairman, and subcommittee members, I appreciate the opportunity to present testimony on behalf of NATSO, the national trade association representing America's travel plazas and truckstops.

Our industry employs over 250,000 people, with annual sales of $28 billion. Members of NATSO pump two-thirds of all diesel fuel retailed in this country.

My name is Delia Meier, and I am senior vice president of Iowa 80 Truckstop in Walcott, IA. Like many NATSO members, my business is a family one. It was founded by my parents in 1965, to serve the needs of the professional driver. Today, we operate eight truckstops in Iowa, Illinois, Ohio, Missouri, Arkansas, and Oklahoma.

When we discuss the recent price increases, one factor is the 4.3-cent increase in the Federal excise tax on motor fuels. NATSO believes that before motor fuel taxes are raised, the Federal Government needs to collect all of existing taxes. Otherwise, it is simply a pay raise for tax crooks.

We also believe all motor fuel tax should go into the Highway Trust Fund. At this table, we are all too familiar with the pressing needs facing our aging infrastructure.

It is astonishing to note that, according to the Federal Highway Administration, tax cheating costs the Federal Government $1.3 billion annually. Given this figure, I think the committee can understand the threat the tax evader poses to law-abiding truckstop operators.

Fortunately, the President's economic package consolidated the point of collection for diesel tax at the terminal rack. We believe this is a major step forward in increasing compliance.

The most dramatic impact on prices came as a result of the Clean Air Act's requirement that only low-sulfur fuel be used for on-road purposes.

During September, my average rack for No. 2 high-sulfur diesel was 55 cents. That figure is before taxes and transportation costs. The monthly average in October for low-sulfur was 71 cents, a 16-cent increase. The most dramatic price increase occurred at our Kansas City facility, where the price went from 56 cents on September 1 for No. 2 diesel, to a high of 85 cents for low-sulfur on October 18.

I should point out that, prior to October 1, refiners projected that rack price of low-sulfur diesel would be 5 to 7 cents more than the high-sulfur product.

The increase in prices that I experienced at my own truckstops in the Midwest was very similar to the situation other NATSO truckstop members faced throughout the country. There were slight increases in the weeks leading up to October 1, as we converted to the more expensive low-sulfur fuel; and then there were significant increases, of 20 to 40 cents, between October 1 and October 18. It looks like prices started to drop, at that point.

Market disruptions have been especially acute in California, where State-imposed clean air standards have driven diesel fuel prices higher still.

The shortage of low-sulfur diesel has certainly raised questions which we now feel the committee should address.

Our industry was assured by refiners that low-sulfur diesel would be available in sufficient quantity by October 1, 1993. The fact is, it was not. And as a result, the price has skyrocketed. Nationwide shortages were far more extensive than could be caused by temporary problems by the Explorer pipeline in St. Louis.

Truckstop operators also question EPA's enforcement policy. The petroleum industry had over 2 year to comply with low-sulfur requirements of the Clean Air Act. Consequently, the EPA stated time and time again that it would not issue any discretion in regard to low-sulfur enforcement, and we were expected to be in compliance on October 1.

NATSO recommended strict compliance to all of its members. And we met that challenge, even if it meant bypassing traditional fuel suppliers, and shipping the low-sulfur product from hundreds of miles away. For example, at our Joplin, MO location, we were forced to pull fuel out of Fort Worth, TX, which was 283 miles away, and five times the freight cost that we normally pay.

Yet, shortly before the effective date, the EPA issued enforcement discretion for just one sector of the diesel fuel industry, until December 1. It is difficult to comprehend that the EPA would take such a major step, without first consulting or even advising the association that represents those who pump two-thirds of all diesel fuel sold at the retail level.

I should point out that, eventually, the EPA granted similar short-term discretion to other groups, including retailers. The bottom line is that the EPA greatly complicated matters by sending confusing and inconsistent messages to diesel users and suppliers.

To a large extent, what I have just outlined is already behind us; and I hope we can learn some lessons from it.

On January 1, 1994, the diesel tax compliance provisions contained in the budget reconciliation bill are scheduled to take effect. With less than 45 days before that effective date, the Treasury Department has not issued regulations implementing these provisions.

I urge this subcommittee to encourage the Treasury Department to issue regulations in a timely fashion, to publicize the upcoming rules so everyone is on notice, and to enforce them unwaveringly. We cannot afford a repeat of what resulted from EPA's indecisiveness.

NATSO and I thank the chairman and the subcommittee for the honor to appear before you, and I would be happy to try and answer any questions.

[The prepared statement of Ms. Meier follows:]

PREPARED STATEMENT OF DELIA MOON MEIER

Mr. Chairman and Subcommittee members, I appreciate the opportunity to present testimony on behalf of NATSO, the national trade association representing America's travel plazas and truckstops.

My name is Delia Moon Meier and I am Senior Vice President of Iowa 80 Truckstop, Inc. based in Walcott, Iowa. Like many NATSO members, my business is a family one, founded by my father in 1965 to serve the needs of the professional driver and the traveling public. Today, we operate eight truckstops in Iowa, Illinois, Ohio, Missouri, Arkansas and Oklahoma.

I first want to commend the Committee for holding today's hearing. As someone who has spent the last three months wrestling with diesel fuel price increases, I greatly appreciate the Subcommittee's attention to this issue.

When we discuss the rationale for price increases, the most obvious contributing factor is the 4.3 cent increase in the federal excise tax on motor fuels which became effective on October 1st. NATSO did not support this tax increase for two reasons. The first is that we believe that before motor fuel taxes are raised, the federal government needs to do more to ensure that it is collecting all of the tax it is due. To do otherwise, is simply to give the tax crooks a pay raise. The second reason is because, like other transportation-related businesses, we strongly believe if the motor fuel tax is to be increased, the additional revenue should go to the highway trust fund. We are all too familiar with the pressing needs facing our aging infrastructure.

Our association has identified fuel tax compliance as our number one legislative priority this year. In far too many instances, NATSO members across this country have been forced to compete against tax crooks who are able to price their product substantially below our costs. The Federal Highway Administration has recently estimated that the current level of gasoline tax evasion is between 3 and 7 percent of gallons consumed. And FHWA says the level of diesel fuel tax evasion is between 15 percent and 25 percent of all gallons consumed.

It is astonishing to note that perhaps one4ourth of all diesel fuel consumed by highway users is being done without the federal excise tax being remitted. The Federal Highway Administration estimates that the annual revenue loss to the federal government is $1.3 billion. Given the totality of these numbers, I think the Committee can understand the threat the tax evader poses to law-abiding truckstop operators.

Fortunately, the good news in the President's economic package was that it also contained a provision to consolidate the point of collection of the diesel excise tax to the terminal rack. We believe that moving the collection point further upstream is a major step forward in increasing compliance. However, we also realize that this step alone will not end the evasion. The federal government must aggressively pursue the tax evader by identifying fuel tax compliance as a top priority and committing the necessary resources to aggressive enforcement, investigation and prevention. We would hope that members of the Subcommittee will work with us in ensuring this objective is met.

The tax increase aside, the most dramatic impact on prices came as a result of the Clean Air Act's requirement that only low sulfur fuel be used for on-road purposes beginning on October 1st. To illustrate the effect this transition had on the fuel industry, let me share with you what I personally experienced at our truckstops.

In general terms, during the month of September, the average rack price for number 2, high sulfur diesel at our eight locations was 55 cents. That figure is before taxes and transportation costs are added. The monthly average in October for low sulfur was 71 cents—a 16 cent increase. The steepest increase in price occurred at our Kansas City facility where the price went from 56 cents on September 1st for number 2 diesel to a high of 85 cents for low sulfur on October 18th. Now, Mr. Chairman, I should point out that prior to October 1st, refiners projected that the rack price of low sulfur diesel would be five to seven cents more then the high sulfur product.

The increase in prices that I experienced in the Midwest was very similar to the situation other NATSO members faced throughout the country. There were slight increases in the weeks leading up to October 1st as retailers converted to the more

expensive low sulfur product and then significant increases, between 20 and 40 cents, after October 1st as supplies became low.

The shortage of low sulfur diesel has certainly raised questions which we feel the Committee should address. Our industry received repeated assurances from virtually all the major refiners that low sulfur diesel would be available in sufficient quantity by October 1, 1993. The fact is, it wasn't. And as a result, prices skyrocketed. The nationwide shortages were far more extensive than could be caused by the temporary problems experienced by the Explorer pipeline.

Truckstop operators that I have talked to have also raised concerns about EPA's enforcement policy. The petroleum industry had over two years lead time to comply with the low sulfur requirements of the Clean Air Act. Consequently, the EPA stated time and time again that it would not issue any discretion in regard to low sulfur enforcement and that all parties were expected to be in compliance on October 1st.

My industry's association, NATSO, recommended strict compliance to all of its members. Countless members met that challenge, even if it meant bypassing traditional fuel suppliers and shipping the low sulfur product from hundreds of miles away at greater expense. In the case of our Joplin, Missouri facility, we were forced to pull fuel out of Dallas—283 miles away.

Yet, as we discovered in the press, almost immediately after the effective date, the EPA issued enforcement discretion for just one sector of the diesel fuel industry until the first of December. It is difficult to comprehend that EPA would take such a major step without first consulting, or even advising, the association that represents those who pump two-thirds of all diesel fuel sold at the retail level in this country.

I should point out that eventually EPA granted similar discretion to other groups, including retailers, though for a shorter period of time. The bottom line is that the EPA greatly complicated matters by sending confusing and inconsistent messages to diesel users and suppliers.

Market disruptions have been especially acute in California where state-imposed clean-air standards have driven diesel fuel prices higher still.

Briefly, in 1988, the California Air Resources Board (CARB) adopted regulations cutting the sulfur and aromatics content of diesel fuel with the well-intentioned objective of reducing exhaust emissions of sulfur, particulates and oxides of nitrogen.

During development and consideration of the CARB regulations, refiners assured CARB—and CARB in turn assured the California truckstop industry—that the additional price of the lower aromatic fuel would not exceed five to eight cents per gallon.

There were also assurances that supply would not be an issue because those refiners unable to meet the October 1, 1993 deadline could still produce the higher aromatic fuel and pay a mitigation fee of 6 cents per gallon.

California truckstop operators now believe they were misled on both counts. The average rack price of diesel fuel jumped 23 cents per gallon in southern California between September 1, 1993 and October 7, 1993. In some parts of the state, the wholesale price of diesel increased by nearly 40 cents per gallon as supply shortages forced retailers to scramble to find product and pay tremendous transportation fees to ensure adequate supply.

With five years of advance notice by CARB regarding implementation dates, it is difficult for California truckstop operators to think anything other than that refiners took advantage of the marketplace by creating artificial shortages.

In mid October, California Governor Pete Wilson called an emergency meeting to assess his state's problems. Among those who testified were oil company representatives who were asked to account for at least 14 cents of the price increase. News accounts of the meeting report that the refiners could not justify the increase.

The California Air Resources Board is clearly embarrassed by the market disruptions caused by the low-aromatic mandate, and CARB members have openly stated their view that oil companies are guilty of gouging their diesel fuel customers.

Another development that will have a significant impact on the trucking industry is the fact that business meal deductions will only be allowed at 50 percent of cost, instead of 80 percent. Most NATSO members operate restaurants as part of their business. And can tell you that this change will decrease the number of meals sold1 and consequently, impact employment at my restaurants and those of other NATSO members.

Though this provision in the President's economic program was sold as an attack on the "three martini lunch of fat cats," its impact will be felt by working drivers seeking a low-cost meal while on the road. We would like to see Congress pass legislation which restores this deduction to at least 80 percent. In fact, Congress should legislate a 100 percent deduction for meals up to the average federal per diem, espe-

cially for those business travelers who must stay away from home to comply with such federal mandates as the maximum hours of service rule.

To a large extent, what I've just outlined in the way of my observations on factors contributing to recent diesel fuel price increases is commentary on what is already behind us. With all due respect, I believe there is little, if anything, that can be done to reverse the harm which has occurred over the last several months.

do hope, however, that some lessons can be and have been learned from this episode, and with that hope in mind, I commend Chairman Exon and this Subcommittee for being forward-looking enough to attempt to prevent reoccurrences. And on that count, I believe there is something this panel can do.

On January 1, 1994, the diesel tax compliance provisions contained in the budget reconciliation bill are scheduled to take effect. For reasons I cited earlier, I believe it is important that these provisions be implemented as scheduled.

With less than six weeks before the enactment date, the Treasury Department has not yet issued regulations implementing these provisions. I would urge this Subcommittee to weigh in with Treasury, encouraging that department to issue the regulations in a timely fashion, to publicize the upcoming rules so everyone is on notice, and to enforce them unwaveringly. We cannot afford to repeat the uncertainties which resulted from the EPA's indecisiveness. NATSO recommends that the Treasury take a firm stand and urges the Subcommittee to do likewise.

That concludes my prepared statement. NATSO and I again thank the Chairman and the Subcommittee for the honor to appear before you, and I would be happy to try and answer your questions.

Senator EXON. Ms. Meier, thank you very much for your excellent testimony. We learn a great deal from these hearings. We will be contacting various agencies of the Federal Government on your behalf. It seems to me that we have to move on some of these areas. They do not always listen to us, but we have a club over them which you do not have out there.

Let me ask this question. How many truckstops did you say you operate?

Ms. MEIER. Eight.

Senator EXON. Who is your principal supplier of diesel, or do you have different suppliers at different places?

Ms. MEIER. It depends upon if we are branded or not. At Walcott, IA, where I work most of the time, we are branded Amoco. We buy all of our product at Amoco.

Senator EXON. I am sure Mr. Stitzell appreciates that. [Laughter.]

Ms. MEIER. Well, regarding the price, it has been brought up a couple of times today. When I left yesterday we were within about 12 or 13 cents of what we were prior to the increases.

Senator EXON. So, we are down into that—we come back down to that 10-cent area, but unfortunately it is on the high side rather than the low side of 10 cents; is that right?

Ms. MEIER. Correct.

Senator EXON. Is that true in your other stops as well?

Ms. MEIER. That is true.

Senator EXON. So, we are back down to where it is not too far from where the truckers expected it to be.

Ms. MEIER. Right. Somebody testified here earlier that retail prices were not going down as quickly as our suppliers' prices. Some of that is recouping margin that we lost when there was the price spike. It cut into our margin as well as our customers' margin. You just cannot pass on everything, and if there is a delay, that is part of it.

Senator EXON. We understand that. Walcott, IA, where is that? Help me out.

Ms. MEIER. It is about 10 miles west of Davenport, right by the Mississippi.

Senator EXON. So, it is over on the eastern edge. At Walcott, do you have other suppliers than Amoco from whom you could buy diesel?

Ms. MEIER. According to our contract, no. We are branded Amoco. We try and buy all of our product there.

Senator EXON. In all of your eight stops, are you for practical purposes, essentially locked into buying only from one oil company?

Ms. MEIER. No. We also have another large stop down in Joplin, MO, and we are not branded there, and so we get fuel any place we choose, and that is the location from which we had to go all the way to Dallas for product.

Senator EXON. You heard me ask the previous panel, do you have any indication or suspicion or proof of price fixing during this particular period?

Ms. MEIER. Absolutely not.

Senator EXON. Thank you very much. My time is up. Senator Hutchison.

Senator HUTCHISON. Yes, thank you, Mr. Chairman. First of all, let me just ask you a technical question on the Treasury regulations. Have they not come out for proposed rulemaking with a comment period, or have they come out and there has been a comment period but you have not seen the final regulations?

Senator EXON. Senator Hutchison, before the witnesses answer that question, could I interrupt you for just a moment to recognize Senator Pressler?

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. I would like to put my statement and questions in the record.

[The prepared statement of Senator Pressler follows:]

PREPARED STATEMENT OF SENATOR PRESSLER

Mr. Chairman. I am pleased to participate in today's Surface Transportation Subcommittee hearing to address the unjustifiable diesel fuel price increases that have crippled consumers across the nation. Although I am no longer a member of this Subcommittee, this Issue has been of great concern to me and the citizens of South Dakota. Frankly, I have been outraged at the recent increase in diesel fuel prices, particularly in the Midwest.

In South Dakota, fuel prices have increased by thirty to thirty4ive cent per gallon since October 1st. Yet, there is no logical reason for these astronomical increases. Therefore, on October 20th, I wrote to U.S. Attorney General, Janet Reno, asking for a Justice Department Investigation into this matter.

I explained to the Attorney General that I was aware of only three factors that could have influenced diesel fuel price Increases. FIrst, the President's 4.3 cents per gallon motor fuels excise tax took effect on October 1st.

Second, new diesel fuel requirements established by the Clean Air Act of 1990 also took effect on October 1st. As you know, Mr. Chairman, these requirements required all trucks and on-road vehicles to use low sulfur diesel fuel.

Third, a number of outages along the Explorer pipeline, which carries. diesel fuel from the Gulf Coast to the Midwest, have resulted in shortages of low-sulfur fuel throughout the Midwest. In response to the shortage caused by the Explorer pipeline outages, the Environmental Protection Agency (EPA) relaxed the low-sulfur fuel requirement.

Yet, similar price increases have been reported in areas of the country not served by the Explorer pipeline. Further, the Explorer pipeline went back on line October 10th, but prices continued to rise after that date. Why?

In my view, these three factors could not possibly add up to justify the 35 cents per gallon fuel price increase that is robbing our consumers. For these reasons, I asked the Attorney General to initiate an investigation In what fear may be oil industry price gouging.

In addition, I also have contacted Secretary O'Leary at the Department of Energy, Chairman Gail C. McDonald at the Interstate Commerce Commission, and Administrator Carol M. Browner at the Environmental Protection Agency concerning the drastic fuel price increases. I ask that my letters and the agencies' responses that I have received to date be made a part of the hearing record.

I also request that an article on soaring fuel prices from the October 21st Journal of Commerce be included in the record.

Mr. Chairman, we simply must get to the bottom of these unjustifiable prices. To add insult to injury, these price hikes have come at the most inopportune time for midwestern agricultural states like yours and mine. The people of South Dakota, Nebraska, and other Midwestern states are just beginning to recover from last summer's devastating rains and flooding. For the affected farmers, truckers, small businesses, and consumers, these price increases are totally unacceptable.

Again, Mr. Chairman, thank you for holding this important hearing. I look forward to hearing from today's witnesses.

Senator EXON. Thank you very much. Thank you for being here. Please proceed, Senator Hutchison.

Senator HUTCHISON. Do any of you know?

Mr. DONOHUE. The regulations have not come out at all. The regulations are not just paper issues. They are going to tell these fellows what color they have to make certain types of diesel, and if it is a day late and a dollar short, we are going to be hustling again, and then the price of everything is going to go back up.

Senator HUTCHISON. Well, let me ask you this question. What are the main points that you would like to see in the regulations that would mediate any problems that you might have?

Mr. DONOHUE. Senator, three things, without getting it all technical. I would like to see the regulations from the Treasury reflect, understand, and appreciate the regulations we have already gotten from the EPA, and provide as much uniformity and commonality that could be generated.

Second, I would like to see the smallest amount possible of paperwork, and third, I would like to see them soon. If we do not have a chance to participate, comment, and react, and otherwise involve ourselves, we are going to be in the same mess that we were before.

Senator HUTCHISON. Well, let me just say that I for one would like to make that known to the Treasury, because I do sympathize greatly with this. I always think of the horse drawn by the committee that turns out to be a camel. I mean, this is ridiculous.

Mr. DONOHUE. Senator, to help you and to help the committee, we would be very happy by tomorrow to provide you with a very short note that outlines the three or four points that are of most concern to all of the folks here. It will be made available to you and other members of the committee so they might use it in their discussions with the Treasury.

Senator HUTCHISON. I would like to have that.

Mr. DONOHUE. We would be happy to do that, and I will even check with our friends here to make sure we have covered all the issues.

Senator HUTCHISON. And furthermore, having been in small business myself, I will ask the Treasury at least if they do not get the rules out with a comment period of at least 60 days, that they

delay the implementation so that you do have a chance to work with whatever comes out in a reasonable fashion.

The second question I would just like to ask Mr. Donohue as well is, in your written testimony you talked about the taxes and the regulatory cost that you have not only from us but also State and local governments eating up 36 percent of your tractor semitrailer combination gross income.

If you were going to target the most onerous of those regulations that you think could be perhaps withdrawn or made better, what are the key problem areas for you?

Mr. DONOHUE. Senator, as you saw in the chart, the first problem is the level of all the taxes. Unfortunately municipalities, States, Federal Government, everybody sees trucks as a cash cow, because it is easy to try and put the taxes on there.

Some of it is used for good purposes. It goes into the Highway Trust Fund. Then when you look into the other costs, what we call the mandates, if you look to the year 2000, that $41 billion is going to go up over $73 billion, and a great portion of it is going to be in the environmental area.

Now, we are not talking about clean air, which we are so committed to because it is our employees that are living there and their families. But when you start getting into things like storm water runoff and paying for the problems with underground storage tanks that were created three owners ago, it is a serious matter. I mean, I could spend a half hour with you and it would curl your hair.

These regulations are so punitive for a small company, and often they do not understand them. You could not understand them, and I do not when I read them. That is why I have to keep Simonson and those technical guys around. Sometimes companies ignore the rules and they hope they do not get caught.

The point is that the industry is being so badly served, and the country is badly served by good intentions. We could achieve much of these desired results on a performance basis instead of on a design basis. I tell you, if you look now and say, we are spending 30-some percent of the total revenues, you go to the turn of the century, before we even start paying for the truck we are going to be up around 50 percent of total revenues. Then what happens?

So, you are asking a question that makes us passionate. The highway taxes we understand. We are getting roads out of them. We can try and pass those taxes on, but you try and go and tell your customer that I am trying to pass on the cost of leaking underground storage tanks, or storm water runoff, and you get very little sympathy. You tell them we cannot wash trucks any more, because we have to wait until next week, until we can get the appropriate washing place. We are talking about 200,000 small companies around this country that cannot comply with that sort of ridiculous behavior.

Senator HUTCHISON. If you would, I also would like to have that experience in writing, because when I was home in August the cities also have the same problem with the runoff. Just measuring it is going to cost the city of San Antonio $3 million. They are having to set up a whole separate district to deal with measuring the surface water runoff, and determining what is in it.

Mr. DONOHUE. Wait until we write to you, Senator, and we tell you about the permitting process. Now, that makes the lotto look like a very organized process.

There is the process to get a permit on your storm water runoff, the question of washing trucks, the rules for group permits, and State permits.

I will get you the material for Treasury right away, but we will need more time for the stormwater issue. The rules are all well-intentioned. They are the right thing to do, but the way they have done them is the problem. Truckstops have all those same problems.

Ms. MEIER. Correct.

Mr. DONOHUE. We are talking about small family businesses that do not have a lot of nuclear scientists on the staff, cannot afford to employ them, and their profits are shrinking right up on good intentions.

Senator HUTCHISON. Well, in case Ms. Meier is looking for some scientists, the SSC has some wonderful people who no longer have a job, so we can provide that for you.

Ms. MEIER. If I may add, I think it is important that we not delay implementing the point of collection change for the fuel tax. The Government is leaving $1.3 billion on the table every single year. I think it is time that we collect everything that is coming to you, all of the taxes. The Treasury has said that they are almost ready to release the regulations, so maybe you could prompt them to release them.

Mr. DONOHUE. I would agree with that. The only people that are opposed to collecting the tax at the highest possible level are people that have been using the tax for cashflow.

Senator HUTCHISON. Thank you very much.

Senator EXON. Thank you, Senator. I have one or two more questions. First of all, Mr. Stitzell, you heard an earlier reference to problems that some truck engines are having with regard to the low-sulfur diesel. Has your company, to your knowledge, ever done any testing to see whether that would be a problem or not?

Mr. STITZELL. Mr. Chairman, we are aware of the recent problems. Our scientists and engineers and others in the industry are working through API and the Engine Manufacturers Association. My understanding is that they are having a meeting next week to begin zeroing in on the problem.

Regarding your question, did we do some testing: yes, as well we sent samples of the material to various engine manufacturers as much as 2 years in advance of the required date. What appears to have been brought out earlier we would agree with, that no one tested it in older equipment where much of the reported problem seems to be. Again, I am encouraged that there is an industry group coordinated by the API and EPA.

Senator EXON. If you would be good enough to make a mental note, as additional information comes along on this issue, to supply this information to us, we would appreciate it very much.

Mr. STITZELL. I would be very glad to.

Senator EXON. I have one last question, and we may have some additional written questions for the record.

Mr. Donohue, you may have heard the question which I asked Mr. Trout with regard to trucking companies being subjected to potentially new recordkeeping requirements. You probably heard Mr. Trout's concerns about this. I want to know if you also have heard similar complaints and have similar concerns about other truckers.

Mr. DONOHUE. Senator, this is another case of good intention. We are all over the Department of Transportation explaining the cost, the loss of productivity, and the absolute confusion that would come out of some of the recordkeeping demands that are suggested. We are hopeful that that will fall on sensible ears.

I should tell you that Rodney Slater, the Federal Highway Administrator, and Jane Garvey, the Deputy, and a lot of the staff over there, are particularly competent and very responsive. I am hopeful that John Collins and our staff, who are living over there on this matter, will have success. If that is not the case, this is an issue that you are going to hear more about than you heard about the price of fuel, and I know we can count on you help just looking for common sense here.

We want to provide what is available, as Mr. Trout said. I just want to give you an example. Now, I want you to think of one of your family as having a job as a truck driver, and the records that are being asked for from one driver are all the meal sheets, all the fuel receipts—I mean, you would have to have a huge file—and we have got 5 million drivers in this country. DOT is going to be up here for an appropriation to get a new building to keep the stuff in. We need some common sense on this matter. They will not accept computer printouts.

Senator EXON. They will not accept them?

Mr. DONOHUE. No, copies of the actual receipts. We need some common sense here, and I think we will find it because we are raising a certain amount of havoc about that.

Senator EXON. I appreciate very much knowing about that. Since this issue was brought to my attention, I intended to talk to the Secretary about a number of matters. I am glad to hear that you feel you are making some headway with some of the fine assistants he has over there.

Also, I would appreciate your keeping me posted on this. I will be making an inquiry in the next day or so of the Secretary to pass along my concerns to him about many of the issues you have raised. I will tell him that you have advised me that your association has been talking to some of his subordinates over there on this matter. Hopefully we can get it worked out.

Mr. DONOHUE. I will get a list for you with the subjects that are amongst discussion right now, so you can just have a little checklist in front of you.

Senator EXON. That would be helpful. We appreciate you all coming here. We appreciate all of your excellent testimony as we continue to try and work with you and the industry to make better sense out of some of the rules and regulations and red tape that either we pass in Congress or are put into effect by the bureaucrats under our direction.

With that, we are adjourned.

[Whereupon, at 4:25 p.m., the committee adjourned.]

APPENDIX

LETTER FROM RICHARD D. WILSON, DIRECTOR, OFFICE OF MOBILE SOURCES, ENVIRONMENTAL PROTECTION AGENCY

NOVEMBER 16, 1993.

Honorable LARRY PRESSLER,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR PRESSLER: Thank you for your letter of October 15, 1993, concerning the increased prices of diesel fuel in South Dakota. You have asked the Environmental Protection Agency ("EPA") to waive the low-sulfur enforcement regulations in South Dakota for sixty days.

As you know, the diesel sulfur regulations were promulgated on August 21, 1990, with an implementation date of October 1, 1993. The three year lead time was afforded the industry to provide an adequate length of time to prepare for October 1, 1993, including the installation of adequate storage facilities and determination of demand. The regulations were promulgated in large part because vehicle manufacturers expressed concern that the levels of sulfur in diesel fuel would generate significant particulate sulfate emissions that would make it difficult to meet 1994 emission standards, which were promulgated in 1985.

In addition, EPA utilized the three year lead time constructively, meeting many times with representatives of trade associations that represent the refiners, distributors and truckers, actively soliciting their input regarding issues that affect them, and inviting them to make us aware of any concerns. EPA solicited questions in the Federal Register in March 1993 (copy enclosed), held a public meeting on May 20, 1993, and responded to all of the questions received in a question and answer document (copy enclosed).

Your letter expresses concern about the high price of low sulfur fuel. Part of this price increase was due to the additional 4.3 cent fuel tax, implemented on October 1. Also, EPA estimates the cost of producing lower sulfur fuel was 2.3 cents per gallon. We believe the remainder of the increase was due to tight supply. Factors which we believe contributed to this tight supply situation are compliance by the industry with these new requirements close to October l, unanticipated demand for low sulfur fuel, lack of barge traffic on the Mississippi River, shutdown of the Explorer pipeline for approximately ten days and some refinery start-up problems. As a result, we took action on October 8, 1993, announcing EPA may exercise enforcement discretion for two weeks, provided the regulated party demonstrated that it could not procure adequate supplies of low sulfur diesel fuel without incurring undue hardship. The party also had to be able to demonstrate that it made numerous attempts to find supplies of low sulfur fuel and that it only purchased sufficient quantities to get them through the shortage. We decided not to extend enforcement discretion beyond October 22 because information from numerous sources indicated that the supply situation had improved and prices were dropping. Please be assured that EPA will continue to monitor the situation and consider additional relief if circumstances warrant.

I hope this letter has addressed your concerns. If you have any further questions concerning this matter, please contact me or Mary T. Smith, Director, Field Operations and Support Division.

Sincerely,

RICHARD D. WILSON,
Director, Office of Mobile Sources.

[The Federal Register, Vol. 58, No. 46, March 11, 993, Rules and Regulations, pp. 13413–13414 and "1993 Diesel Desulfurization Question and Answer Document" may be found in the committee's files.]

Letter From Jay E. Hakes, Administrator, Energy Information Administration

November 8, 1993.

The Honorable Larry Pressler,
U.S. Senate,
Washington, DC 20510–4101

Dear Senator Pressler: Thank you for your October 15, 1993, letter on behalf of your constituents, who voiced concern over diesel fuel prices. Your letter was referred to the Energy Information Administration (EIA), the independent statistical and analytical agency within the Department of Energy.

While fuel prices are not controlled or regulated by the Federal Government, EIA does expend a great deal of time and effort monitoring them. In recent months, significant attention has been focused, by EIA and others, on the changeover to low-sulfur diesel fuel for on-highway use, as mandated by the Clean Air Act Amendments of 1990.

Enclosed is a copy of an in-house EIA report dealing with this subject. As summarized in the report, localized supply problems, most notably in California and in the Midwest, resulted in spot shortages and rapidly escalating prices for on-highway diesel fuel during the month of October 1993. The worst of these problems appeared to have passed by mid-October, although the effects may take several weeks, or longer, to subside. A portion of the impact of this changeover is likely to be permanent in that the cost of desulfurization and some lessening of flexibility in the supply system will likely result in higher overall price levels.

I hope that this information is helpful to you in addressing your constituents' concerns. If we can be of further assistance, please contact Dr. John S. Cook.

Sincerely,

Jay E. Hakes,
Administrator, Energy Information Administration.

REGIONAL LOW-SULFUR DIESEL OUTLOOK CONTINUES TO IMPROVE

As with the previous EPA-mandated introductions of lower-RVP and oxygenated gasoline, the prospect of conversion to low-sulfur diesel fuel brought predictions of major supply and/or price impacts during the buildup to its October 1 start date. However, as the date approached, and API and EIA began reporting data for low-sulfur diesel, concerns lessened somewhat with the appearance of rapidly building supplies. Unfortunately, regional problems emerged within the first week of October, particularly in the Midwest (PADD II) and on the West Coast (PADD V), and to a lesser extent in the Rocky Mountains (PADD Iv). Marketers and consumers in these areas have experienced tight supplies and abnormally high prices, although these conditions peaked in mid-October and have steadily improved since (see graphs).

At the national level (as of October 22), total No. 2 distillate primary stocks are within the 3-year average range, and low-sulfur diesel makes up 40 percent of the total, down from a high of 43 percent September 24. With on-highway diesel demand estimated at 46 percent of total distillate demand (less in the winter, due to the seasonality of heating oil consumption), overall stocks appear adequate. Likewise, refinery production of low-sulfur diesel is currently 54 percent of the total, and imports, though variable, averaged 43 percent low-sulfur in the past 4 weeks. While October demand figures by sulfur level are not yet available, API reported that low-sulfur demand comprised 36 percent in September as marketers began to draw product to change over inventories before the deadline.

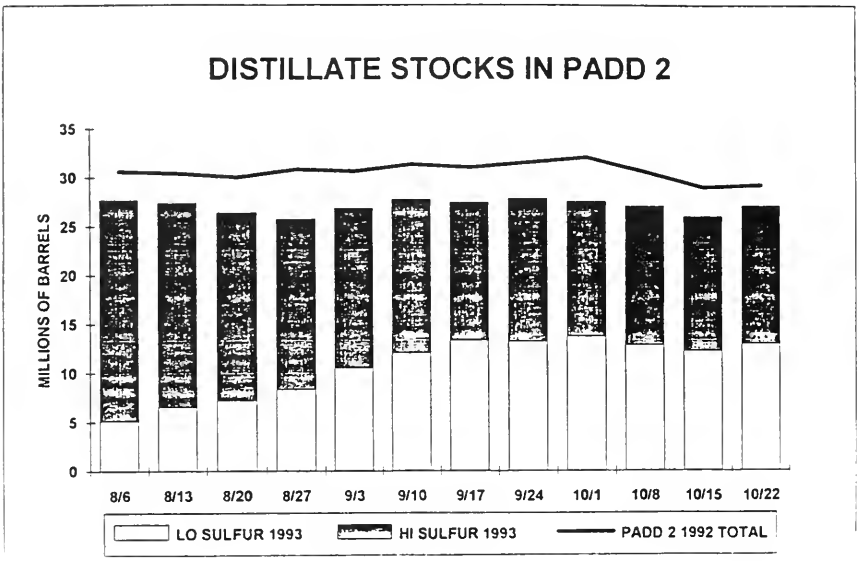
Regionally, however, significant problems arose in early October. In the Midwest, localized outages of low-sulfur diesel have occurred, and price differentials between high- and low-sulfur product of 10 to 15 cents per gallon have been seen. Group 3 (Tulsa) spot market prices for low-sulfur rose 20 cents in three weeks, before declining even faster. Terminal and retail prices quickly followed suit, rising in response to spot prices and local outages, then softening more slowly as markets stabilized. The problem appears to be largely attributable to logistical bottlenecks slowing the changeover of inventories, including the widespread summer flooding, which slowed demand in the region, and more recent localized flooding, which caused the precautionary shutdown of a section of the Explorer Pipeline, the main source of product from the Gulf Coast, for over a week. Partially because of these problems, overall distillate stocks in the region have been low all summer, and are currently about 9 percent below their 5-year seasonal average. Low-sulfur stocks and production are near their expected market share, at 48 percent and 51 percent, respectively, of

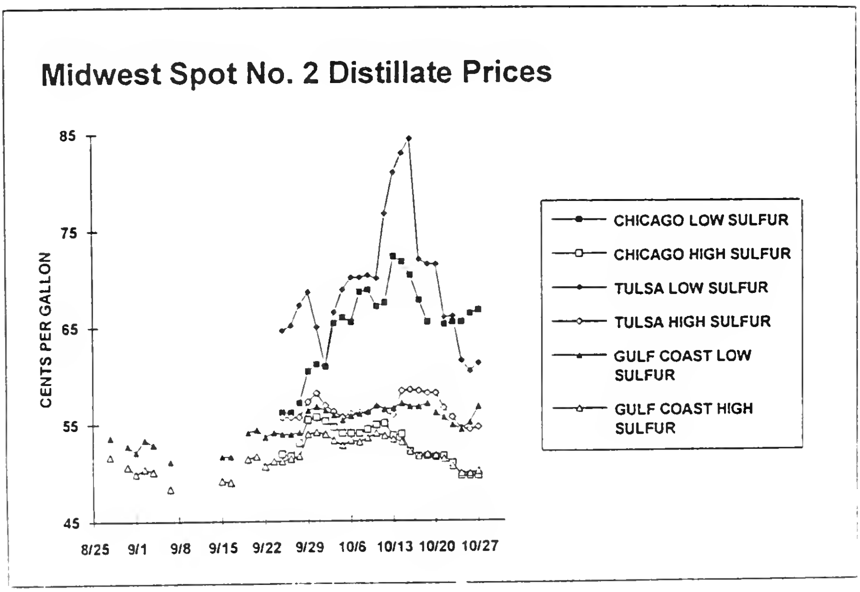
total distillate. The situation began to improve as soon as the Explorer Pipeline resumed shipments, and shortages are now said to be very localized.

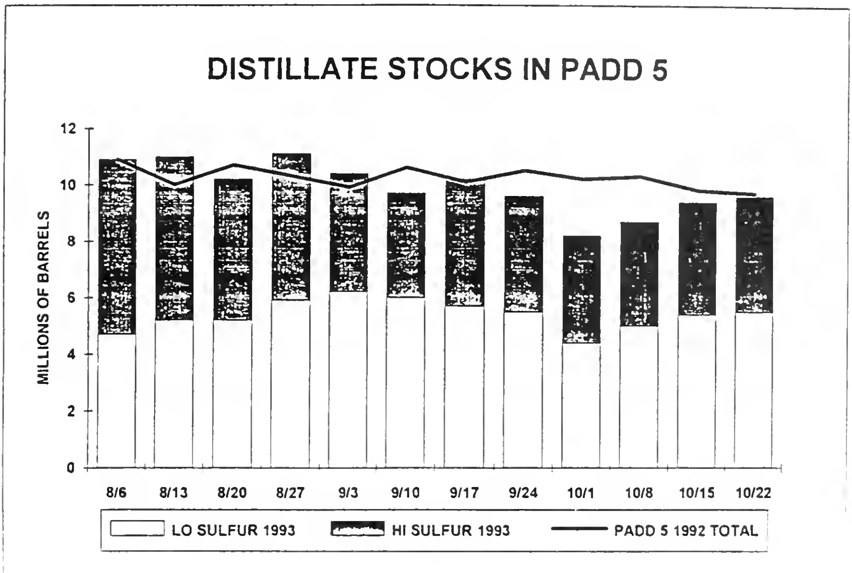
The difficulties on the West Coast stem from a different, more complex set of circumstances. PADD V distillate inventories are also low, at 9 percent below the 5-year average, though low-sulfur makes up 55 percent of the total. The attractiveness of higher prices in Far East markets has drawn high levels of exports from the region for much of 1993, but the stock drawdown occurred mostly in late September, as low-sulfur product was moved from primary to secondary stocks. The California Air Resources Board (CARB) set even more restrictive diesel fuel specifications than EPA, particularly with respect to aromatics. The cost of upgrading to produce this fuel has restricted production, and caused some refiners to opt not to produce it at all. Additionally, a number of refineries experienced problems during the critical month of September. However, certain waivers and an emergency increase in the allowance for small refiners has increased production levels, with low-sulfur now 67 percent of distillate output, and ongoing supply may prove to be adequate once the initial shortfall is relieved. In the interim, however, tight supplies and increased costs to refiners pushed prices up as much as 30 cents per gallon in the first half of October, prompting interstate truckers to avoiding fueling in California if at all possible. Since then, prices are reported to have retreated somewhat, but remain above those in neighboring states.

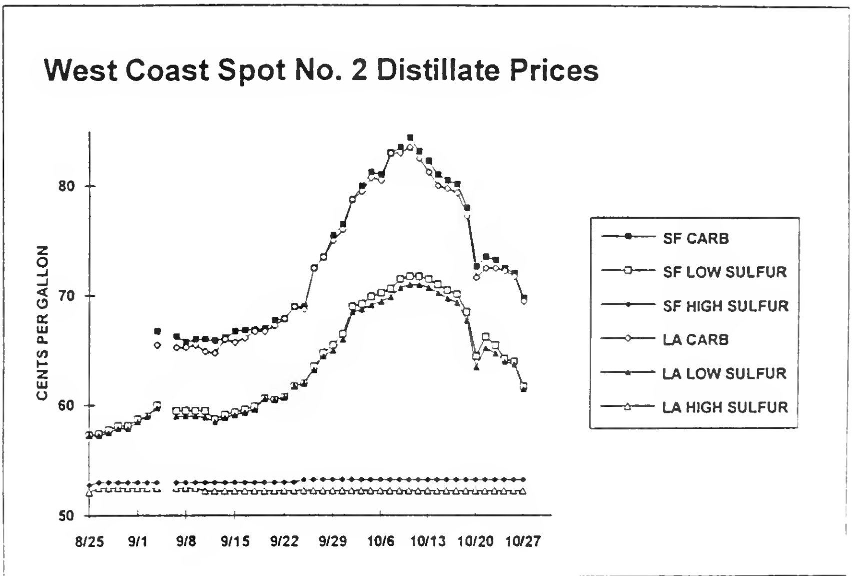
While the regional problems were most critical around the second week of October, and have already eased significantly, consumer backlash is still gathering momentum. The most vocal critics of the supply problems and resulting price spikes, and arguably the most affected by them, are members of the trucking industry, particularly independent owner-operators. Already stung by the October 1 Federal excise tax increase, along with a number of non-energy-related issues, several independent truckers' associations have called for a nationwide trucker shutdown November 11-17. Adding to the woes of the trucking industry, reports have surfaced nationwide of diesel engine fuel pump problems seemingly associated with the low-sulfur fuel. Reportedly, lower lubricity of the new fuel, possibly related to either its lower sulfur content or the refing process needed to meet the specifications, may cause shrinkage and failure of O-ring seals.

In response to the various problems encountered to date, the Environmental Protection Agency (EPA) sent a letter to marketers and major consumers of diesel fuel on October 8 granting "enforcement discretion" in cases of extreme difficulty in obtaining supplies, extending through October 22. A followup letter on October 22 announced that this relief would not be extended, given significant improvement in the intervening two weeks. CARB, in response to sharp criticism at the State level, has taken a number of actions. Small California refiners (three in all), which had been granted an extra year to meet the new specifications, have been allowed to increase their production of non-complying diesel fuel by 15,000 barrels per day (BPD). Additionally, on October 19, CARB issued an emergency order temporarily allowing off-highway use of high-sulfur diesel, freeing up an estimated 40,000 BPD of the restricted low-sulfur fuel for on-highway use, and enabling agricultural users to get through the harvest season.


DISTILLATE STOCKS IN PADD 2
MILLIONS OF BARRELS
0
5
10
15
20
25
30
35
8/6
8/13
8/20
8/27
9/3
9/10
9/17
9/24
10/1
10/8
10/15
10/22
LO SULFUR 1993
HI SULFUR 1993
PADD 2 1992 TOTAL


Midwest Spot No. 2 Distillate Prices
CENTS PER GALLON
45
55
65
75
85
8/25
9/1
9/8
9/15
9/22
9/29
10/6
10/13
10/20
10/27
CHICAGO LOW SULFUR
CHICAGO HIGH SULFUR
TULSA LOW SULFUR
TULSA HIGH SULFUR
GULF COAST LOW SULFUR
GULF COAST HIGH SULFUR





Federal Fuel Tax Rates (Cents per Gallon)

(Effective October 1, 1993, the Omnibus Budget Reconciliation Act of 1993 establishes the following rates for transportation fuels [in cents per gallon])

Fuel type	Prior to Oct 1, 1993	Effective Oct. 1, 1993
Gasoline	14.0	18.3
Gasohol (from ethanol):		
10% or more gas/alcohol blend	8.6	12.9
7.7–<10% gasoline/alcohol blend	9.84	14.14
5.7–<7.7 gasoline/alcohol blend	10.58	15.22

Federal Fuel Tax Rates (Cents per Gallon)—Continued

(Effective October 1, 1993, the Omnibus Budget Reconciliation Act of 1993 establishes the following rates for transportation fuels [in cents per gallon])

Fuel type	Prior to Oct. 1, 1993	Effective Oct. 1, 1993
Diesel	20.0	24.3
Diesel/ethanol blends	14.6	18.9
Diesel for intercity buses	3.0	7.3
Special fuels (including alcohol from petroleum)	14.0	18.3
Neat methanol (not from petroleum or natural gas)	8.0	12.3
Neat ethanol (not from petroleum or natural gas)	8.6	12.9
Methanol/ethanol from natural gas	7.0	11.3
Compressed natural gas as vehicle fuel (per million cubic ft., equivalent to 4.3/gal.)	None	48.54

LETTER FROM GAIL C. MCDONALD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

NOVEMBER 5, 1993.

The Honorable LARRY PRESSLER,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR PRESSLER: I am writing to address the concern you recently expressed about the high prices that some of your constituents in the trucking industry are paying for diesel fuel.

As you know, one factor behind recent, increased fuel prices is the federal fuel tax increase enacted as part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) and the Clean Air Act Amendments of 1990 (Pub. L. 101-547) requiring the use of "clean" or low-sulfur diesel fuel.

Another factor affecting fuel prices in the Midwest was last summer's flooding that caused the Explorer pipeline (a major conduit for the supply of fuel into the Chicago area) and several subsidiary pipelines to be shut down. Though the Explorer was reopened in mid-October, its shutdown did create some spot scarcities. According to sources at the U.S. Department of Energy, however, wholesale prices are beginning to decline and some relief should be seen at the retail level in approximately two weeks.

The Interstate Commerce Commission recognized that even a few weeks of high fuel prices can have a devastating effect on trucking companies, in particular on independent truck owner-operators. The Commission responded to the fuel price increase in three ways.

First, I established an Energy Task Force on Fuel Increases to serve as the agency's central contact point and clearinghouse for information regarding fuel price increases. The Task Force currently is gathering fuel-price information, analyzing its findings and sharing data and recommendations with the Commission, Congress, federal and state agencies, and with the transportation industry.

Second, on October 29, the Commission established a new Special Tariff Authority (STA) under docket "Ex Parte MC-215, Petition of the American Trucking Associations to Provide Motor Carriers Relief from Increased Federal Fuel Taxes and Other Federally Mandated Fuel Price Increases." This STA allows independently filed rate increases to become effective on one working day's notice, and "collectively set" increases (that is, rates filed by trucking industry rate bureaus) to become effective on five working days' notice, through December 13, 1993. Under the STA, trucking firms may file tariffs containing fuel-related increases without submitting written cost justification. It is important to note that the Commission issued its STA on the condition that the proceeds of fuel-related increases be passed along by trucking firms to the individuals or entities actually bearing the burden of increased fuel costs.

Third, I directed the Commission's office of Economics to examine the effects of the recent rise in fuel prices on trucking companies operating under contract and to report its findings to the Commission. Such information will be valuable in our ongoing effort to monitor the performance of the interstate trucking industry to ensure its efficient operation.

For your information, I am enclosing a copy of a Commission news release announcing the establishment of the Energy Task Force on Fuel Increases; copies of the Commission's decision in Ex Parte No. MC-215 and the Commission's news release announcing that decision; and a copy of the Commission's latest, weekly Na-

tional Fuel Price Survey reflecting national prices overall (as opposed to individual geographic areas).

I hope this information will be useful to your constituents. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely,

GAIL C. MCDONALD,
Chairman.

LETTER FROM SENATOR PRESSLER

OCTOBER 15, 1993.

The Honorable HAZEL R. O'LEARY,
Department of Energy,
Washington, DC 20585

DEAR MADAM SECRETARY: Many South Dakotans have contacted my office to report that diesel fuel prices have increased up to 35 cents per gallon since August 1993. The price increase has been most dramatic since October 1st. I am requesting that your Department investigate this alarming increase in fuel prices, which adversely affects many individuals and businesses in my state and many others.

I am aware of only three factors that could have influenced diesel fuel prices. first, as you well know, the President's 4.3 cents per gallon gasoline tax took effect on October 1st. Second, new diesel fuel requirements established by the Clean Air Act of 1990 also took effect on October 1st. These requirements required all trucks and on-road vehicles to use low sulfur diesel fuel. Third, a number of outages along the Explorer pipeline, which carries diesel fuel from the Gulf Coast to the Midwest, have resulted in shortages of low-sulfur fuel throughout the Midwest.

These three factors could not add up to a 35 cents per gallon increase. In response to the shortage caused by the Explorer pipeline outages, the Environmental Protection Agency (EPA) relaxed the low-sulfur fuel requirement. further, similar price increases have been reported in areas of the country not served by the Explorer pipeline. I do not know of any other justifiable reason for such exorbitant price increases.

The bottom line is simple: these fuel spikes are damaging South Dakota's economy. The people of South Dakota, and throughout the Midwest, have just begun to recover from last summer's devastating rains and flooding. for the affected farmers, truckers, small businesses, and consumers, these price increases are totally unacceptable. Therefore, I urge you to initiate an investigation of this very serious matter. I stand ready to assist you in this effort.

Thank you for your attention to this important issue. I look forward tohearing from you soon.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

LETTER FROM SENATOR PRESSLER

OCTOBER 15, 1993.

Ms. CAROL M. BROWNER,
Environmental Protection Agency
Washington, DC 20460

DEAR MS. BROWNER: Many South Dakotans have contacted my office to report that diesel fuel prices have increased up to 35 cents per gallon since August 1993. The price increase has been most dramatic since October 1st. I am asking your office to waive the low sulfur enforcement regulations in South Dakota for a period of sixty days, beginning on this date. As this is a crisis situation, I am standing by to assist you in any way possible to inform South Dakotans of your decision immediately.

As you know, the Clean Air Act of 1990 set new requirements for the use of diesel fuel. Knowing the rule would take effect on October 1, 1993, all participants in the distribution system have had three years to prepare for the use of both high sulfur and low sulfur diesel fuel in the market place. While some price increase was expected, the price increases are exorbitant. A shortage of low sulfur diesel has caused alarming fuel price increases in my home state.

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recover from last summerls devastating rains and flooding. For the affected farmers, truckers, small businesses, and consumers, these price increases are totally unacceptable.

Thank you for your attention to this important issue. I look forward to hearing from you soon.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

LETTER FROM SENATOR PRESSLER

OCTOBER 15, 1993.

Mr. EDWARD J. PHILBIN,
Interstate Commerce Commission,
Washington, DC 20423

DEAR CHAIRMAN PHILBIN: Many South Dakotans have contacted my office to report that diesel fuel prices have increased up to 35 cents per gallon since August 1993. The price increase has been most dramatic since October 1st. I am requesting that your Department investigate this alarming increase in fuel prices, which adversely affects many individuals and businesses in my state and many others.

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Thank you for your attention to this important issue. I look forward to hearing from you soon.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

LETTER FROM SENATOR PRESSLER

OCTOBER 15, 1993.

The Honorable JANET RENO,
Attorney General,
Washington, DC 20530

DEAR MADAM ATTORNEY GENERAL: Many South Dakotans have contacted my office to report that diesel fuel prices have increased up to 35 cents per gallon since August 1993. The price increase has been most dramatic since October 1st. I am requesting that your Department investigate this alarming increase in fuel prices, which adversely affects many individuals and businesses in my state and many others.

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Thank you for your attention to this important issue. I look forward to hearing from you soon.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

[Washington Post, November 16, 1993]

DIESEL DRIVERS SAY A NEW FUEL MANDATED BY EPA CAUSES LEAKS

(By Warren Brown)

Eric Reisfeld blames the Environmental Protection Agency for the diesel stains in his Silver Spring drive way. Scott Meeman of Laurel is on the agency's case, too.

Both say their diesel-powered cars have been leaking since early October, when they began using an EPA-mandated low-sulfur fuel.

Across the country, trucking companies' have been complaining about premature O-ring failure—that is, the breakdown of gaskets, or rubber seals, in diesel truck fuel-injection systems. And everyone is pointing to the new low-sulfur fuel as the culprit.

The new diesel fuel, required under 1992 amendments to the federal Clean Air Act, is supposed to burn more cleanly than high-sulfur diesel. But it's not supposed to burn a hole in the pockets of consumers, said Meeman, who said he is looking at a possible $400 repair bill for his diesel-powered Volkswagen Rabbit.

The EPA acknowledges that there is a problem, but agency officials say, they have not yet determined how the low-sulfur fuel is damaging gaskets.

"We have had a number of complaints from heavy-duty truck operators about O-rings, shrinking in fuel-injection pumps," said Mary Smith, director of EPA's low-sulfur diesel fuel program.

There are several hints of causes and fixes.

According to officials at the American Petroleum Institute, rubber gaskets develop a chemical affinity for one fuel formulation. When the formula changes dramatically—from high-sulfur to low-sulfur, for example—the gaskets might react by becoming brittle or misshapen, said API spokesman Joseph Lastelic.

Anyway, replacing the gaskets seems to solve the problem, according to Lastelic and Smith.

Reggie Koromah, a mechanic at Baltimore's Arundel Fuel Injection Corp., agreed. "The problem seems to happen only in cars that had some of the old diesel fuel in the tank at the time the new fuel was added," Koromah said. "Somehow, the mixture seems to attack the gaskets. We've been draining tanks and putting in new gaskets; and people don't seem to have any problem after that," Koromah said.

[Journal of Commerce, October 21, 1993]

OWNER-OPERATORS TO STAGE A RALLY IN PROTEST OF SOARING FUEL PRICES

(By Dane Hamilton)

Independent truckers are planning a 500-truck demonstration outside CNN-TV's Atlanta headquarters Sunday to call attention to skyrocketing diesel fuel prices and other complaints.

The motor carriers want the network to publicize their complaints prior to the planned national independent trucker shutdown Nov. 11-17.

Truckers are fuming about diesel fuel prices, which have soared 40 cents or more a gallon in some areas of the country.

But the demonstration also is slated to call attention to split speed limits, police harassment, hours of service limitations and other small trucker complaints, said John Sapp, an independent trucker and organizer with the owner-operators' group Truckers Across America.

"Everybody's upset. We've got oil companies screwing us left and right. If we don't handle these problems, there is just going to be a quagmire," Mr. Sapp said.

Oil companies say the added charges are due to refining costs and shortages of low-sulfur diesel fuel—another federal requirement—but truckers believe profiteering by refiners, distributors and truck stops is a major factor.

Truckers Across America is one of several loosely knit small truckers' groups calling for a shutdown by the nation's estimated 350,000 owner-operators on Nov. 11-17.

"It's building and it's going to come to a head. Everyone says we can't get together, but we can," said Albert Melton, an independent owner-operator from Beaumont, Texas, and organizer for another pressure group, Truckers of America.

Mr. Melton said many truckers "want to block every major road leading to D.C.," similar to action by French truckers last year around Paris. Truck company managers said they are sympathetic, but expressed doubt it would happen.

"I think they have a legitimate gripe, but I don't think it's going to happen," said a manager at Truckers Express Inc. of Missoula, Mont.

"Fuel prices are out of control, but I think they need to go about it a different way," added Ron Hinrichs, a claims manager for Monfort Trucking Co., Greeley, Colo.

He said he participated in truck drivers' protests in 1973 after the Arab oil embargo, "but it didn't do any good. All it did was attract a lot of police."

Organizers this week picked up a key endorsement from the 20,000-member Owner-Operator Independent Drivers' Association, a trucker trade group.

"Our position is to support the membership," said Todd Spencer the association's executive director. "If they tell us (to support the strike), we will."

The owner-operators' association, the American Trucking Associations and some lawmakers have asked the Interstate Commerce Commission to authorize a truck freight rate surcharge to cover soaring diesel costs, a move the ICC turned down a month ago.

"This is outrageous," said Sen. Larry Pressler, R-S.D. "The price of crude oil is relatively stable, but the diesel fuel prices have skyrocketed."

"They are starting to revolt, and I don't blame them" said Paul Bergant, senior vice president of marketing for J.B. Hunt Transport Services Inc,, a Lowell, Ark., truckload carrier.

Mr. Bergant said shippers and truck companies that employ owner-operators are ignoring these independent contractors' requests to share the fuel cost burden.

"They're saying, 'let's ignore it,' and the owner-operator gets pinched," he said. "I feel for them."

Prepared Statement of GiGi Topolski, United Drivers of America

Honorable U.S. Sen. J. James Exon (D-NE), Chairman of the Subcommittee, I, GiGi Topolski, am representing the United Drivers of America.

I need to talk to you about the fuel prices from all over the U.S., not only Nebraska! We will have a big problem. The shutdown is not over yet, there is no date set when it will be OVER.

I am staying at the truck stop in Jessup, Room 318. It's very urgent before there is a food crisis [as a result of the trucker shutdown]. Please let me talk to you.

Prepared Statement of Bud Spaulding, President, United Drivers of America

American truck drivers and owner-operators are in trouble—for them the American Dream is fading fast.

The reasons are as follows:

1. At present, the tax on fuel and imposed environmental guidelines are blatantly discriminatory to the trucking industry. These, along with changes in the income tax laws, create an almost impossible cost burden for the ordinary truck driver.
2. Existing freight rates and pay scales do not reflect cost increases. There is a need for regulated minimums on wages and rates that are paid to the driver or owner-operator, and not to the companies and freight brokers.

3. There is a need for standardization and uniform enforcement of trucking laws and regulations throughout the United States. The differences between penalties for violations and the differing speed limits among the States are absurd. The dual speed limit for trucks and cars is unsafe and a hazard to both.

4. The lack of enforcement of sections of the 1980 Motor Carrier Act specifically regarding the practice by shippers and receivers to coerce a driver to load or unload or force a driver to pay someone to perform this task has resulted in many driver injuries and adds to unsafe conditions.

5. Also, the drivers are concerned about the impact of NAFTA. Since nothing is known about its effect and what it will do to the fate of drivers, they are frightened.

For years, the owner-operator's profit margin has been in severe decline. The costs of insurance and living expenses, as well as the cost of repairs and maintenance have skyrocketed. A truck costs $50,000–$100,000 and gets approximately 5–6 miles per gallon. With an increase in some cases of 30–60 cents per gallon for fuel, profits are now almost nonexistent. These conditions, along with rate cutting and higher taxes, are a death blow to the owner-operators of America.

The company drivers, paid by percentage or by the mile, have suffered greatly as well. Their wages have not risen, with the cost of living at home or on the road. In addition to unreasonably low wages, the drivers often face three weeks to sometimes months away from their families because the company they work for "cannot find" a load with a destination near their home or terminal.

The drivers of America cannot afford to continue facing 1990's expenses with only 1970's returns. We are extremely hard working and constitute a vital part of the American workforce. We are willing to shoulder our fair share of the financial burdens of this country but cannot continue to operate under existing conditions.

We only wish to receive a fair rate of return on our labor, time, and investments. We want to preserve our right to be self-employed and/or profitably employed, and to perform a service we love with the continued opportunity to achieve the American Dream.

Prepared Statement of Susan Perry, Senior Vice President, Government Relations, American Bus Association

Due to scheduling conflicts, the American Bus Association was unable to be present at your hearing on November 18, 1993, on the impact of recent diesel fuel price increases on the motor carrier industries. We are grateful to you for convening this hearing, and we appreciate this opportunity to submit a statement for the record.

ABA is the national trade association for the intercity bus industry. Our membership includes some 550 ICC-certificated bus operator members providing a variety of services including regular route, intercity; charters and tours; airport and special operations.

The recent fuel price increases have been felt to a great effect, mostly because of their timing. The industry received several "hits" at once; in some parts of the country, they were worse than in others, notably in California. Allow me to review for the record what occurred:

1. As a result of the 1993 Budget Reconciliation Act, bus operators were liable for an increase in the federal diesel fuel tax of 4.3 cents per gallon. This was the first federal diesel fuel tax increase in a number of years assessed on these carriers. Based on the industry's energy efficiency and the country's policy to encourage more use of high occupancy vehicles coupled with consideration of who rides intercity buses (predominantly the young, the old, the poor, and those in rural America with no other intercity transportation), Congress has exempted the industry from most of the diesel taxes. Prior to the 1993 Act, buses were liable for only 3.1 cents of the 20.1 cents tax. We believe that this was equitable and consistent with federal transportation policy. We do not understand why intercity bus was included in this year's tax levy since publicly operated buses continued their exemption and the airlines received a two-year exemption (amounting to an estimated one billion dollar loss to the U. S. Treasury). In any case, as of October 1, 1993, intercity bus companies are paying a new 4.3 cents per gallon on diesel fuel.

2. On October 1, 1993, another increase was imposed on bus operators—that of the increased cost per gallon of low sulfur fuel as mandated by federal regulation. Recognizing that hindsight is 20/20, it now is obvious that this requirement should have been phased in gradually, either in different parts of the country or on different size or type of carriers, or by some other qualifications. What happened instead was that everybody had to purge fuel tanks on the same date and refill them

with the new diesel. This was difficult, if not impossible, and prices soared above the predicted three to four cents per gallon increase.

3. In California, carriers had yet another burden: the requirement to use low aromatic fuel. This added a third price increase of some eight cents per gallon. Bus companies found themselves victims of lack of supply as well as of prices that soared on what fuel was available. Additionally, there are lubricity problems associated with the low aromatic fuel causing engines to have failed injectors, fuel pumps, and O-rings.

As you know so well, Mr. Chairman, the intercity bus industry is one that cannot afford nor absorb new costs in operation. We are most concerned and hope that some relief will be forthcoming. We appreciate your asking the Justice Department to look into the spiking of the diesel fuel prices; we also are pleased that the Interstate Commerce Commission set up a committee to monitor the situation. We would like to keep you informed of what we see happening in our industry as well.

Again, we thank you for holding a hearing and for giving us the chance to submit a statement.

Prepared Statement of Rita Bontz, President, Independent Truckers and Drivers Association

We are pleased that you are holding a hearing on the diesel fuel situation, and we ask that you consider our comments. Our members have asked me to describe some of their experiences in recent weeks and to present their suggestions for avoiding similar occurrences should (he occasion arise again.

As you have heard from others, diesel fuel prices began to rise even before the diesel fuel increase and the low-sulfur mandate went into effect. We have attached a report of the prices increases at six truck stops as recorded by an ITDA member who hauls general commodities and packaged foodstuffs to the West Coast and returns with loads of perishable food.

Our members suggest that when legislation is enacted that affects the price and supply of fuel a system be implemented to anticipate shortages and provide measures allowing the trucking industry to adequately adjust freight rates. As one small fleet owner told me, he thought he bad raised his rates enough to cover the added fuel costs. He was careful to keep the rates as reasonable as possible. Unfortunately, the price of fuel went far beyond his expectations. As the result, he suffered significant losses because of his operating expenses.

This businessman suggests production planners should have considered that the switch to low-sulfur fuel and the increased need for heating oil would occur simultaneously. The industry should have prepared to have sufficient supplies of both fuels on hand. "Was it fair," he asks, "for refiners to raise prices when they failed to meet an expected demand?"

Should additional legislation to improve the environment be enacted that would affect the price and availability of fuel, we suggest that a temporary cap be placed on prices to give everyone an opportunity to adjust accordingly.

Thank you for the opportunity to present our views.

FUEL PRICE SURVEY—SUBMITTED BY INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION

Union 76 Truck Stop, New Lisbon, Indiana: 8/20, 92.9 cents per gallon; 9/19, 98.9; 10/5, 111.9; 10/11, 121.9; 10/25, 121.9; 11/11, 118.9.

Anteloe Truck Stop, Burns, Wyoming: 10/13, 95.9 cents per gallon; 10/9, 114.9; 11/10, 117.9.

Beacon Oil, Kingman, Arizona: 9/16, 113.9 cents per gallon; 10/7, 129.9; 10/31, 136.9; 11/2, 135.9; 11/3, 134.9.

Stewart Enterprises, Williamsburg, Missouri: 9/12, 91.2 cents per gallon; 10/5, 108.9; 10/10, 114.9; 10/17, 119.9; 11/11, 108.9.

Flying J, Truck Stop, Cheyenne, Wyoming: 8/19, 88.9 cents per gallon; 10/6, 109.9; 10/18, 119.9; 11/10, 121.9.

Oasis Truck Center, Sayre, Oklahoma: 7/3, 108.9 cents per gallon; 7/17, 108.9; 9/6, 108.9; 9/12, 108.9; 10/11, 126.9.

Prepared Statement of Senator Dorgan

Mr. Chairman, thank you for holding this hearing today on the impact of the recent diesel fuel price increases on the motor carrier industry. As you know, about

one month ago some areas of the country experienced a steep increase in the price of diesel fuel. In North Dakota for example, the average price of diesel fuel increased 20 cents per gallon in a period of three weeks. This dramatic increase cost North Dakota truckers over a million dollars per week. Although prices have begun to return close to September levels, this Committee needs to examine the various factors which drove prices up during the month of October and explore allegations of price gauging and profiteering.

I understand that there are several factors which converged simultaneously around October 1, 1993 which contributed to the rapid increase in fuel prices. These factors include: federal clean air requirements for low-sulfur fuel; implementation of a 4.3 cent per gallon increase in the federal fuel excise tax; supply problems which were complicated by purchase delays and the shutdown of the Explorer pipeline; and heightened agricultural demand during harvest season. However, I am not convinced that these factors alone justify the steep increase in prices that reached 40 cents per gallon in some areas. For this reason, last month I asked Chairman Hollings to conduct a Committee investigation into this situation and I am pleased that Senator Exon, Chairman of the Surface Transportation Subcommittee, is taking the lead in this investigation by holding this hearing so that the Commerce Committee can attain more information from the oil industry as well as the trucking industry which has been dramatically impacted by diesel fuel price increases.

I would like to submit for the record a letter I recently received from the North Dakota Motor Carriers Association, Inc. which outlines the impact that the diesel fuel price increases has had on North Dakota. Over 70 percent of all the dollars spent on freight in North Dakota are in motor carrier transportation. Thus, significant increases in fuel prices like we have seen in recent months has a dramatic impact not only on the trucking industry but on the North Dakota economy as a whole. When fuel prices increase so dramatically, it is imperative that we attain a full understanding of the underlying causes of such an increase and come to a resolution as to whether or not such increases were in part artificial and unjustified. At the present time, I do not know the answer to that question. However, I intend to work with Senator Exon, other Senators on this Committee, the Federal Trade Commission, the Interstate Commerce Commission, and the Justice Department to find the answers.

Thank you once again Mr. Chairman for holding this hearing and for your interest in this important issue.

LETTER FROM LEROY H. ERNST, MANAGING DIRECTOR, NORTH DAKOTA MOTOR CARRIERS ASSOCIATION, INC.

NOVEMBER 17, 1993.

Senator BYRON DORGAN,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR DORGAN: I am writing you on behalf of the 20,000+ persons—or one out of every 10 North Dakota workers who earn their living in the trucking industry.

In North Dakota the price of diesel fuel shot up by an average per gallon price of $1.03 in August to $1.30-$1.32 in November. In other areas of the country, our North Dakota based truckload carriers have seen hikes of up to 40 cents per gallon.

The problems began on October 1, when truck owners were hit with a double blow: the federal fuel tax rose by 4.3 cents per gallon and trucks had to start using low-sulfur diesel fuel to comply with a provision of the Clean Air Act

We supported the change to low-sulfur as a means for improving the environment, at a cost that was expected to be 4 to 6 cents per gallon. Instead, what was supposed to be a 10- to 11-cents per gallon increase turned into hikes of as much as 40.

An informal survey of our members shows that our North Dakota carriers have experienced a 15 percent to 22.5 percent increase in per mile operating costs. You can see what this does to the average 1.5 percent to 25 percent (per mile) profit margin for a typical carrier.

In projecting costs, a 1-cent per gallon increase in a fuel tax or the retail price of fuel will impact the trucking industry in North Dakota by $1 million dollars per year. For example, a sustained increase of 25 cents per gallon will mean a $25 million dollar impact to North Dakota trucking.

If we continue to see prices remain at current levels in addition to price spikes in the next cold wave or when new IRS fuel-dyeing rules take effect January 1st, a crisis will have been developed which, in my opinion, will drive a lot of truckers

out of business. Put all of these factors together and you have a recipe for astronomical fuel prices and loss of trucking capacity in our state.

While there may be a perception that the trucking industry is made up of huge, wealthy carriers, the opposite is true. About 90 percent of the for-hire-carriers in the country gross well under $1 million a year. All those "Ma & Pa" companies, and every one of those jobs, stands to be affected by what action you in the Congress will take to address this issue.

Truckers deliver the goods in North Dakota—71 percent of the dollars spent on freight are for truck transportation. We are willing to pay our share for cleaner air and deficit reduction. But we cannot afford sustained, unexpected cost increases.

Thank you for the opportunity to present our views for your committee's deliberations. I look forward to working with you and your staff.

ESSENTIALITY OF TRUCKING IN NORTH DAKOTA

No other industry directly affects our daily lives like the trucking industry. The clothes we wear, the food we eat, the cars we drive, even the tools we use to make a living—come to us by truck. As a matter of fact, on the average, every product in America—from the school desks your children use to the newspaper in front of you travels 5 to 7 times in a truck during its manufacturing and distribution cycle. Without trucks the shelves in your neighborhood grocery store would be empty in 3 days.

When you see a truck, it is an example of people at work—a driver earning his weekly paycheck, products being moved, and commerce in action. By the same token, America owes its position as an economic world leader to its efficient transportation system—a system dominated by the trucking industry. The more trucks you see, the greater proof that industry is thriving, that consumers are buying, and that North Dakota's "wheels of productivity" are going forward.

North Dakota alone has 11,345 businesses which depend heavily on the trucking industry to keep them competitive. Trucks are vital to North Dakota's "truck-dependent" agriculture, forestry, mining, construction, manufacturing and trade industries which employ nearly 54 percent of the resident workers. In addition, only trucks can keep the state's 4,763 retail establishments' shelves stocked and deliver the supplies needed by 5,499 service enterprises daily.

In addition to supporting the majority of North Dakota's essential industries, the trucking industry also employs 20,029 persons here—or one out of every 10 North Dakota workers. These individuals perform a variety of jobs—from driving to dispatching to maintenance and safety inspection—and work for both private and for-hire carriers.

The number of individuals employed by the trucking industry in North Dakota has increased by 11 percent, or 1,934 individuals from 1980 to 1991. The trucking industry plays a critical role in providing the State of North Dakota with high paying jobs, the average annual salary is $26,396 per worker, nearly $8,800 higher than the average for all industries. North Dakota's trucking industry generates an annual payroll of nearly $529 million.

North Dakota depends on trucks not only for jobs but also for freight movement. The over 8.5 million tons of freight moved to and from North Dakota by truck in 1991 represents 71 percent of the total manufactured freight moved by all modes of transportation. Trucks' share of the total freight moved in North Dakota is 2.5 times greater than rail including intermodal movements.

Trucks move 85 percent of the total inbound tons of manufactured goods to North Dakota locations each year. The 5.3 million tons of freight are moved by truckload, less-than-truckload, and private carriers. Trucks complement all modes of transportation and move both the raw materials and the finished products of North Dakota's manufacturing plants and factories. Trucks also move the lion's share of outbound manufactured freight transported from North Dakota locations; the 3.2 million tons hauled by trucks represents 56 percent of the total outbound tons. The selection of motor freight service over other modes of transportation is made by thousands of North Dakota shippers and receivers each day.

Trucks transport 32,848 tons of freight safely and efficiently each business day. Trucks move 71 percent of the total manufactured freight because of the superior door-to-door and cost competitive service provided by motor carriers. The choice is clear, North Dakota freight users prefer the safe, fast and reliable service that only the trucking industry can provide.

Not only is the trucking industry a major contributor to North Dakota's economy, but it also pays a significant share of the state's highway costs. The operator of a

typical five-axle tractor semitrailer will pay $9,049 in state and federal highway user and property taxes in 1993—with $4,209 paid to the State of North Dakota.

In 1991, there were 63,566 medium and heavy commercial trucks registered in the State of North Dakota. The trucking industry paid $61 million in state and federal highway user taxes ($33.4 million was paid to North Dakota), or 38 percent of the total highway user taxes paid in 1991. When you consider that trucks consist of only 10 percent of the total registered vehicles and pay over 38 percent of the total highway taxes it is easy to see that North Dakota does clearly benefit from a strong trucking industry.

Safety is a trucker's number one priority. Drivers not only inspect vehicles prior to taking them on the road, but also periodically stop and inspect the vehicles while transporting freight. North Dakota truckers support the commercial drivers license, mandatory drug testing and increased roadside vehicle inspections. As the amount of freight moved throughout North Dakota increases substantially, so does the trucking industry's safety record. From 1980 to 1991, the North Dakota trucking industry experienced a 15 percent reduction in fatal accidents involving trucks. Concurrently, the number of truck safety inspections has increased by 3,647 vehicles, or 59 percent, between 1989 and 1991. The North Dakota trucking community is proud of its safety record and continues to work hard to improve upon safety initiatives in the State of North Dakota.

North Dakota's best interests are served well by its safe, healthy trucking industry. Trucking provides the state with essential jobs, goods, and revenues. Only trucking can provide the service that will keep North Dakota competitive in an expanding economy based on global markets. North Dakota must look to the state's future and work with the trucking industry to keep the "wheels of productivity" rolling forward.

LETTER FROM SHEILA F. ANTHONY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

NOVEMBER 16, 1993.

The Honorable JIM EXON,
U.S. Senate,
Washington, DC 20510

DEAR MR. CHAIRMAN: Thank you for your letter of October 20, 1993, to Attorney General Reno, expressing your concern over possible price fixing or price gouging within the petroleum industry with respect to diesel fuel. The Department's Antitrust Division has been asked to review the situation in order to determine whether any federal antitrust laws have been violated.

While the antitrust laws would not prohibit any individual company from selling diesel fuel at an independently set price, price-fixing between or among two or more companies likely would violate the law. We are looking into your allegations and if the Department uncovers a violation, you can be assured that it will take appropriate action.

Thank you for bringing this matter to our attention, and I welcome any further information your office may receive with respect to this matter.

Sincerely,

SHEILA F. ANTHONY,
Assistant Attorney General.

[Omaha World Herald, October 31, 1993]

LOW-SULFUR FUEL SPARKS PROBLEMS

LACK OF LUBRICANT DAMAGES ENGINES

(By Mary DeZutter)

The air may be getting cleaner, but some trucks are breaking down under a new Clean Air Act rule that requires them to use low-sulfur fuel.

Mechanical problems in trucks' fuel systems have turned up with such frequency since the rule went into effect Oct. 1 that mechanics, engine manufacturers and trucking companies are pointing to low-sulfur fuel as the culprit.

Truckers are buying new fuel additives that add lubrication to counter the effect, and the makers of Cummins engines have come up with O-rings and seals made of viton, a compound designed to keep their fuel pumps from leaking.

Engine companies report that exposure to the chemicals in low-sulfur fuel can cause the flexible O-rings and seals to deteriorate and leak.

The new low-sulfur fuel doesn't come with the proper additives, either from the refineries or from truck stops. Some trucking company operators got their first inkling that there was a problem when their fuel started leaking onto the pavement.

Bryan and Juli Whitehead, farmers from Sidney, Iowa, who own a fleet of three trucks, count themselves among those who have learned the hard way. The fuel pump went out on one of the trucks last week, and it cost about $200 to rebuild it. Others are paying up to $6OO, Midlands mechanics said.

"Someone should have done some testing and there should have been a warning on this," said Whitehead. "There's a lot of money that can be lost if your pump goes out on the road."

Major carriers have run into the problem, too. Yellow Freight Systems, a national carrier with headquarters in suburban Kansas City, has had an increase in problems with fuel pumps since switching to the low-sulfur fuel, spokeswoman Kathy Finlen said.

The repair costs aren't as big a worry as the potential impact on schedules, she said. "It's our busiest time of year, and we don't want to have any problems, so we're working on this diligently." The problem has not caused significant losses, she said.

Besides fuel pumps, the industry is seeing new problems with fuel injector nozzles and is replacing fuel filters more frequently.

Problems have been reported in trucks that have popular Cummins and Caterpillar engines under the hood, and dealers for trucks with Robert Bosch systems are on the alert.

Dave Townley, automotive service manager for Cummins Great Plains in Omaha. said hundreds of trucks have come in with fuel pump problems in October. In 19 years in the business, he said, "I have not seen this much work in the fall before."

Fuel additives rushed to the market add new costs to trucking operations that already are paying the higher federal fuel tax that went into effect on the same day as the low-sulfur rule, Townley said.

Besides that, using fuel additives "could be skirting the problem," he said. For Cummins engines, "the fix is to switch to the viton O-rings and seals." Cummins is honoring warranties on fuel pumps and taking the position that the link to low-sulfur fuel has not been proved.

Dennis Nielsen, a service manager at Omaha's Caterpillar dealership, Nebraska Machinery Co., said he had heard of problems with Caterpillar engines in Northwest states but hasn't seen any in Nebraska.

Caterpillar engines have had problems not only with pumps but also with fuel-injection nozzles leaking fuel into the truck's oil pan, according to Transportation Topics, a weekly industry newspaper.

At least one manufacturer is saying it will not be held responsible for engine problems that could result if its parts fail due to use of the low-sulfur fuel. Stanadyne Automotive Corp.. North America's leading manufacturer of fuel-injection pumps, nozzles and filtration systems, has sent warnings to dealers about the hazards of low-sulfur fuel.

One of the dealers who got the word is Arnold Rief, co-owner of Midwest Diesel in Beemer, Neb. "Stanadyne states that if premature upper engine failure occurs due to low-sulfur fuels, they will not pay to fix it," Rief said.

Stanadyne recommends its own fuel additive, which costs $4.27 to treat 60 gallons of fuel—more than 7 cents a gallon.

Other additives are being marketed by STP and by a Montana company, SFR, which has an Omaha distributorship.

In its Oct. 1 letter to dealers, Stanadyne included a report from a study done by the Southwest Research Institute. The study concluded that refiners use hydrogen to remove sulfur, reducing the natural lubricating properties of diesel fuel.

Until the industry sets a lubricity standard for refiners to follow, the report said, "the responsibility rests with diesel equipment end-users to use fuel additives to maintain the reliability of their diesel engines."

Rief has seen some rock-hard fuel pumps in the last month, with drivers facing unexpected repair bills. He said he thinks it's a problem for the refineries to fix. "It shouldn't be left up to each individual driver pulling up to the supplier they use and worrying if it's going to wreck their vehicle."

QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MR. SUSICH

Question. Was it fair for refiners to raise the prices when they failed to meet an expected demand?

Answer. Refiners did not fail to meet the expected demand. The petroleum distribution system in the United States will only allow for the storage of a limited quantity of fuel at any given point. If distributors and retailers which rely on that distribution point do not ratably take delivery of the product over a period of time, a spot shortage will occur when all distributors and retailers attempt to take delivery within a few days. Because of the higher price of low-sulfur diesel, many retailers and distributors did not take delivery of the product until they had to on October 1, 1993. This caused a demand spike which depleted storage and raised prices. Despite refiners efforts to anticipate demand, the spot shortages created could only be resolved by waiting for product to pass through the distribution system to the delivery point.

Question. Please provide the Committee with any details or data in reference to this claim of inflated pricing.

Answer. Our historical database of truckstop retail prices provided us with 10 locations where prices exceeded $1.60 per gallon during the month of October 1993. Please refer to the enclosed data printout for detail. Many factors contribute to the retail price of fuel which may include: wholesale product cost, freight or delivery charges, Federal taxes, state taxes, county taxes, city taxes, environmental fees, superfunds, and margin. Without knowing all of the individual factors effecting pricing at each location, I decline comment on whether some were trying to "take advantage of truck drivers."

CP_ID	SS_CA_DATE	RETAIL	COST_EST	STATE	CITY	TS_NAME
01001	10/12/93	1.6030	1.3922	CA	Hayward	BAY AREA PETROLEUM
04361	10/14/93	1.6100	1.3834	CA	Oakland	S.F. OAKLAND
00287	10/29/93	1.6590	1.0282	CO	Edwards	EAGLE VALLEY TEXACO
04373	10/27/93	1.6620	1.0323	IA	Grimes	FINA SERVE
04582	10/18/93	1.6890	1.3443	MN	Fergus Falls	BIG CHIEF STANDARD
09763	10/26/93	1.7560	1.0323	MO	Saint Joseph	DELUXE TRUCK STOP
06779	10/13/93	1.6570	1.3105	NE	Bennet	BENNET CORNER STOP
01467	10/04/93	1.7770	1.0387	SC	Mount Pleasant	GREGORIE'S FOOD MART
01497	10/13/93	1.6690	1.0741	TN	Cookeville	RACETRAC TRUCKSTOP
03522	10/15/93	1.7790	1.0651	TX	Livingston	DIAMOND SHAMROCK #8

QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MR. STITZELL

Answer 1. Amoco prices its products based on competitive market conditions which vary with supply and demand as well as cost. The rise in diesel prices in the Midwest reflected changes in fuel demand and disruptions in supplies along with cost increases associated with producing low sulfur diesel and an increase in the federal excise tax. The supply disruptions in early October in the Midwest and Great Plains states have largely been alleviated. More recently, Amoco's lower diesel fuel prices in that region reflect an increased product supply since late October. Such price fluctuations show that the marketplace is working efficiently. Amoco believes that a competitive market does the best Job of delivering our product to customers at the best price. Amoco and the independent dealers and Jobbers who market our products have a vested interest in maintaining a positive long-term relationship with our customers. That goal can only be achieved by maintaining our commitment to responsible marketing operations.

Answer 2. Since Amoco does not sell motor fuel in California I am unable to address the issue of diesel marketing and prices in that state. Amoco's western operations are limited to markets in Colorado and Utah which are not dependent on supplies from California and thus function as separate markets. Conditions in Colorado and Utah are not representative of California markets.

Answer 3. Amoco routinely contacts its diesel-fuel customers to determine their projected needs. That information enables Amoco to forecast sales and required refinery runs up to two months before sales actually are made at our terminals. As a result of that planning, as well as significant modifications to our refining, pipeline operations, and scheduling system, Amoco had low-sulfur diesel fuel available at our terminals nearly a month before EPA's regulation took effect.

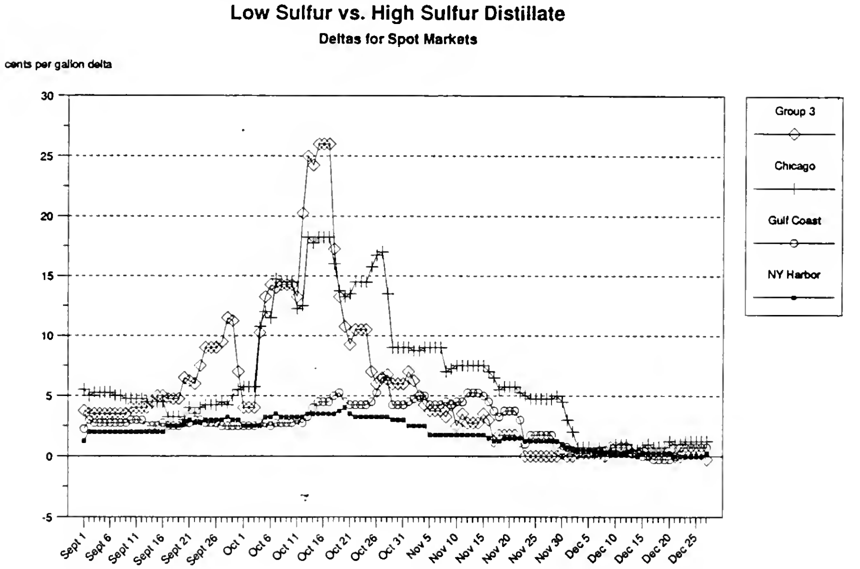
Amoco could not, however, forecast several extraordinary circumstances in the Midwest and Great Plains states which resulted in a demand spike and supply disruption. Delayed liftings by our distributors until Just before the October 1 deadline caused a tremendous run on this product at our terminals. In addition, flooding in the Midwest earlier in the year resulted in a fall harvest that was later than usual. While Amoco could normally divert product from one terminal to another to meet the increased demand, an unscheduled shutdown of the Explorer Pipeline due to

flood damage and related outages on the Williams and Kaneb Pipelines eliminated that option and exacerbated the Midwest supply problem.

The late-September run on distillate inventories, the compressed harvest time, and pipeline outages caused by Midwest flooding resulted in increased diesel fuel prices which had already gone up because of the 4.3 cents per gallon federal fuel tax and the higher costs associated with producing low-sulfur diesel fuel. Amoco faced higher costs because we had to acquire additional low-sulfur fuel to supplement our supply and meet commitments to our customers.

Product shortages and price distortions were limited to the Midwest where unusual conditions prevailed at the time that low-sulfur diesel fuel was being introduced.

Attachment 1 shows the price difference between low-sulfur and high-sulfur distillate for the four key spot markets: Gulf Coast, New York Harbor, Chicago, and Group 3 (Great Plains and Midwest).



QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MR. DONOHUE

Question. How have ATA members attempted to meet the recent increase in transportation costs due to higher diesel fuel prices? Have many of your members filed for rate increases at the Interstate Commerce Commission under the emergency filing provisions? Have contract carriers so filed?

Answer. From information volunteered by a limited number of carriers, we know that some made use of the ICC's temporary one-day notice procedure. Because the ICC did not approve the one-day notice until October 29, more than a month after ATA filed its petition, and after prices had begun dropping, it had lost much of its utility to carriers. At least one carrier created its own fuel price index, which it used to pass on fuel cost changes in the region it serves. A number of state regulatory agencies put in place pass-through mechanisms more promptly than the ICC. Some states have a permanent standby mechanism, which is what ATA has urged the ICC to adopt.

Question. What has been the response to date to ATA's request for an investigation by the Department of Justice, and for White House assistance in working with the agencies involved?

Answer. The White House, through the staff of the National Economic Council, has stayed in touch with us. Transportation Secretary Peña designated Federal Highway Administrator Slater to monitor the situation, which he did; and several personnel from the Environmental Protection Agency (EPA) investigated reports of equipment problems related to low-sulfur diesel fuel. We have heard nothing from the Department of Justice.

Question. The Subcommittee heard testimony at the hearing predicting that the increase in diesel fuel prices would eventually stabilize in the range of 10 cents per gallon, compared with the prices prevailing prior to mid-September. What has been ATA's experience recently with diesel fuel prices?

Answer. ATA anticipated a price increase of 7 to 11 cents per gallon, based on the 4.3-cent federal tax increase that took affect on October 1, plus refining industry and government estimates of increased cost for low-sulfur fuel of 3 to 7 cents per gallon. The retail price of diesel fuel, as measured by the ICC's weekly survey of truck stops, moved up 18.3 cents between August 30 (its low point this year, 109.2 cents per gallon) and October 18. From October 25 (when the price matched the October 18 price of 127.5 cents) to December 20, the price dropped 16.7 cents to 110.8 cents.

Thus, the net change over the last three and a half months was only 1.6 cents. However, during the same period, the price of crude oil and of #2 heating oil on the New York Mercantile Exchange both dropped more 10 cents per gallon. All three prices have been very volatile, and it is too early to say how the relationship between low-sulfur diesel fuel and high-sulfur heating oil will eventually stabilize.

One additional subject we raised at the hearing deserves further comment. The Internal Revenue Service (IRS) finally issued temporary and proposed regulations on November 30 regarding diesel fuel tax collection point, dyeing and refund procedures that will take effect January 1. The IRS rules are consistent with EPA's rules regarding dyeing of high-sulfur fuel. In general, we believe supplies of undyed, low-sulfur, taxable fuel for highway use will be adequate. We remain concerned that some motor carriers holding stocks of dyed additives for keeping fuel usable in cold conditions will be unable to purge their storage tanks and acquire stocks of undyed fuel and additives in time to avoid being unfairly penalized by the late issuance of the IRS rules. We will keep you and the Finance Committee informed if any injustices or operational problems come to our attention.

QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MS. MEIER

Question. At the hearing, the Subcommittee received testimony about a variety of factors contributing to the recent price increases. Do you believe that these price increases have stemmed from normal fluctuations dictated by supply and demand, or have some entities, in your view, unjustifiably raised fuel prices?

Answer. In my view, the sharp increase in fuel prices resulted primarily from inadequate supplies of the low sulfur product.

Question. You testified that refiners repeatedly assured members in your industry that low-sulfur fuel would be available in sufficient quantities by October 1, 1993. Mr. Stitzell of Amoco testified that refiners produced the low-sulfur diesel fuel in ample quantities, but that many diesel fuel wholesalers and retailers were slow in purchasing the cleaner, more expensive fuel, thereby creating a huge demand. How do you reconcile these two views?

Answer. There is no question that demand for the low sulfur product exceeded availability during the first weeks of October. I have no reason to doubt that suppliers felt they had produced sufficient quantities of low sulfur fuel to meet demand. The fact that some retailers may have waited to purchase the more expensive low sulfur fuel could be a possible explanation as to why there was a huge demand. Also demand was probably greater than anticipated since many retailers ran inventories of high sulfur fuel to zero prior to October 1.

I would like to point out that the answer to this question depends upon which part of the country you operate. At our facility in Walcoff, Iowa, our supplier (Amoco) initially provided us with low sulfur fuel beginning in mid-September at the same price as high sulfur fuel.

In the Pacific Northwest, I know that some of our members could not even obtain the high sulfur product in September because the few suppliers that serve that market were only producing the low sulfur product. Whereas, a truckstop operator in Louisiana never experienced a supply problem and, as a result, prices remained relatively stable. An operator in Illinois reported that low sulfur was not available until about a month prior to October 1 and refiners posted wholesale rack prices of 6-8 cents a gallon higher than high. Due to retail competition, retailers could not charge their customers the difference, therefore low sulfur liftings did not occur until the end of the month.

Question. Mr. Trout, Cornhusker Motor Lines, Inc., testified that some of his drivers reported diesel prices as high as $1.70 per gallon in California. Mr. Trout also stated that retailers in surrounding states inflated prices to take advantage of truck

drivers who were trying to avoid the high fuel prices in California. What is your response to this claim of inflated pricing?

Answer. Without having any locations in that marketplace, l cannot speak with any firsthand knowledge to the specifics referred to by Mr. Trout. As I detailed in my written testimony, prices in California skyrocketed as a result of regulations adopted by the state's air resources board which mandated additional reductions in the sulfur and aromatic content of diesel fuel. If prices increased in neighboring states, I would imagine that was based upon the factors resulting from increased demand on low sulfur fuel and not from an opportunity to profiteer from the California situation.

QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MR. O'CONNELL

Question. Mr. Trout of Cornhusker Motor Lines, Inc. testified that some of his drivers reported diesel prices as high as $1.70 per gallon in California. Mr. Trout also stated that retailers in surrounding states inflated prices to take advantage of truck drivers who were trying to avoid the high fuel prices in California. Does OOIDA members' experience or data support this claim of inflated pricing?

Answer. OOIDA members consistently reported that diesel fuel prices were higher in the eight western states than anywhere else in the country. The fuel price increases were first experienced in California, and then in the surrounding states. During October, OOIDA members did indeed report prices in the West that were $1.70 per gallon (or higher) at some locations. The following table sets forth the national average fuel price as well as the price for the eight western states of California, Colorado, Nevada, Arizona, Idaho, Oregon, Utah, and Washington for the seven week period beginning September 20, 1993.

Diesel Fuel Prices

Week of	National average	8 Western States' average
September 20, 1993	107.5	119.7
September 27, 1993	109.6	121.7
October 4, 1993	116.1	129.3
October 11, 1993	120.7	135.8
October 18, 1993	123.5	138.4
October 25, 1993	124.6	138.8
November 1, 1993	123.1	138.7

Question. The Subcommittee heard testimony at the hearing predicting that the increase in diesel fuel prices would eventually stabilize in the range of 10 cents per gallon, compared with the prices prevailing prior to mid-September 1993. what has been OOIDA's experience recently with diesel fuel prices?

Answer. It has been the experience of OOIDA members that diesel fuel prices have now returned to the levels that prevailed in mid-September 1993, and that the predicted 10 cent-per-gallon increase has not occurred. Prices in the western states remain approximately 6 cents-per-gallon higher than in other parts of the country; however, this differential was also prevalent in mid-September. For the week of December 30, 1993, the national average diesel price was $1.053 while the average for the eight western states was $1.126. This price is actually slightly lower than the average for the week of September 20, 1993.

LETTER FROM ED TROUT, PRESIDENT, CORNHUSKER MOTOR LINES, INC.

DECEMBER 17, 1993.

Senator ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510–6125

DEAR SENATOR HOLLINGS: Your December 8 letter arrived toady and the following is my response to the committee in reference to the fuel prices.

We are within a couple of pennies of where our fuel prices were in mid-September 1993. We certainly thank the committee for its efforts to put pressure where necessary to bring the prices into line.

However, the gist of my testimony was that I hoped the committee would further pursue what actually caused the spike of prices in mid-October.

Thank you all for your questions and concern.

Very truly yours,

ED TROUT,
President.

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